

United States
Court of Appeals
for the Ninth Circuit

ALASKA AIRLINES, an Alaskan
Corporation,

Appellant,

vs.

ARTHUR J. OSZMAN,

Appellee.

Transcript of Record

Appeal from the District Court for the Territory of Alaska
Third Division

FILED

JUN 9 1949

PAUL P. O'BRIEN,

CLERK

No. 12231

United States
Court of Appeals
for the Ninth Circuit

ALASKA AIRLINES, an Alaskan
Corporation,

Appellant,

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

BUELL A. NESBETT,
Anchorage, Alaska,

S. J. McCUTCHEON,
Anchorage, Alaska,

Attorneys for Arthur J. Oszman, plaintiff
and appellee.

W. N. CUDDY,
Anchorage, Alaska,

WENDELL P. KAY,
Anchorage, Alaska,

Attorneys for Alaska Airlines, an Alaskan
Corporation, defendants and appellants.

In the District Court for the Territory of Alaska,
Third Division
No. A-4586 Civil

ARTHUR J. OSZMAN,

Plaintiff,

vs.

ALASKA AIRLINES, an Alaskan Corporation,
Defendant.

COMPLAINT

The plaintiff complains of defendant, and alleges:

I.

That during all the times herein mentioned the defendant was and now is a domestic corporation, organized and existing under and by virtue of the laws of the Territory of Alaska, with an office for the transaction of business in the City of Anchorage, Third Division, Territory of Alaska.

II.

That between the 1st day of May, 1944, and the 31st day of March, 1947, at the request of the defendant, the plaintiff expended the sum of One Thousand Eight Hundred Forty and 53/100 Dollars (\$1,840.53), while in the performance of his duties as District Traffic Manager for defendant in the City of Juneau, Territory of Alaska, and Seattle, Washington, for the use and benefit of defendant, as more particularly set forth in Exhibit "A," attached hereto and made a part hereof.

III.

That the said monies were expended by plaintiff in the furtherance of defendant's business interests and solely in reliance on defendant's verbal promise to repay plaintiff for said expenditures.

IV.

That plaintiff has repeatedly demanded payment of same from defendant, but defendant has not repaid the same, nor any part thereof. [1*]

Wherefore, plaintiff prays judgment against defendant in the sum of One Thousand Eight Hundred Forty and 53/100 Dollars (\$1,840.53) with interest at the rate of six (6) per cent per annum on each item from the date of the expenditure of the money represented by each item, for costs of suit, a reasonable attorney's fee and for such other and further relief as to the Court may seem proper.

McCUTCHEON & NESBITT,
Attorneys for Plaintiff,

By /s/ BUELL A. NESBETT.

United States of America,
Territory of Alaska—ss.

Arthur J. Oszman, being first duly sworn, on oath, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing Complaint,

* Page numbering appearing at foot of page of original certified Transcript of Record.

knows the contents thereof, and the same is true as he verily believes.

/s/ ARTHUR J. OSZMAN.

Subscribed and Sworn to before me this 19th day of June, 1947.

(Seal) /s/ S. J. McCUTCHEON,
Notary Public in and for Alaska. My commission
expires 12/29/47. [2]

EXHIBIT "A"

May, 1944 — Transportation from Minneapolis, where plaintiff was employed, to Fairbanks, via Northwest Airlines; advanced by plaintiff on defendant's promise to repay plaintiff after six months employment	\$ 219.30
Miscellaneous expenses incurred while District Traffic Manager in Juneau, May, 1944, to April, 1945 (office expenses, transportation, entertainment, etc.).....	989.63
Gastineau Hotel	181.80
Transportation — Anchorage to Juneau, September, 1946 (Pacific Northern Airlines)	80.50
Shortage in salary check, January 1-15....	159.25
Miscellaneous office expenditures February, 1947, Seattle, Washington	103.17
Miscellaneous office expenditures, March, 1947, Seattle, Washington	106.88
 Total	 \$1,840.53
[Endorsed]: Filed June 21, 1947. [3]	

[Title of District Court and Cause.]

DEMURRER

Comes now the above-named defendant, by his attorneys W. N. Cuddy, and E. L. Arnell, and demurs to the plaintiff's complaint in the above-entitled cause upon the ground that; said

- (a) said complaint does not state facts sufficient to constitute a cause of action against the defendant, and
- (b) that said complaint does not state facts sufficient to constitute a cause of action.

/s/ **W. N. CUDDY,**
Attorney for Defendant.

(Acknowledgment of Service.)

[Endorsed]: Filed Aug. 7, 1947. [4]

M.O. OVERRULING DEMURRER

Now at this time the plaintiff not being present but represented by Buell A. Nesbett of his counsel, the defendant not being present but represented by Edward L. Arnell of its counsel, the following proceedings were had, to-wit:

Argument to the Court was had by Edward L. Arnell, for and in behalf of the defendant.

Whereupon the Court having heard the argument of respective counsel in cause No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines,

defendant, overruled Demurrer and defendant given until Monday, August 18, 1947, to file Answer.

Entered Court Journal No. G-15, Page No. 38, Aug. 11, 1947. [5]

[Title of District Court and Cause.]

ANSWER

Comes Now, the above-named defendant and for answer to the Plaintiff's complaint admits, denies and alleges as follows:

I.

That the defendant is a corporation organized and existing under and by virtue of the laws of the Territory of Alaska, and as such a corporation is qualified, according to law, to defend this action, said corporation having paid its license tax for the year 1947, and filed its annual reports last due.

II.

The defendant denies all allegations set forth in paragraphs II, III and IV, of Plaintiff's complaint.

Wherefore, the Defendant, having answered plaintiff's complaint, prays that the same be dismissed and that the defendant be awarded its costs incurred and expended herein including a reasonable attorney's fee to be allowed by the Court.

ALASKA AIRLINES,
An Alaska Corp..

By /s/ J. E. GRIFF,
Treasurer .

United States of America,
Territory of Alaska—ss.

This Is to Certify that on this 18th day of August, 1947, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn as such, personally came J. E. Griff known to me, and known to be an officer, to wit, the treasurer of the above-named Corporation, that he is authorized according to law for and on behalf of such Corporation to make this verification, that he has read the foregoing answer to plaintiff's complaint, knows the contents thereof and the same is true as he verily believes.

Witness my hand and Notarial Seal on the day and year last above written.

(Seal) /s/ W. N. CUDDY,
Notary Public in and for Alaska. My commission
expires 8-29-49.

[Endorsed]: Filed Aug. 18, 1947. [6]

TRIAL BY JURY CONTINUED

Now came the Trial Jury who, on being called, each answered to his or her own name came the respective parties, came also the respective counsel as heretofore and the trial of cause No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines, an Alaskan Corporation, defendant, was resumed.

Arthur Oszman, heretofore duly sworn, resumed the witness stand for further testimony for and in his own behalf.

The plaintiff rests.

At this time Wendell P. Kay, for and in behalf of the defendant, moves that the Jury be excused pending argument on points of law.

At this time Wendell P. Kay, for and in behalf of the defendant, moves the Court that cause be dismissed on grounds stated in previous demurrer; motion denied; and further moves that cause be dismissed on grounds that plaintiff has failed to establish a case on the face of the evidence; motion denied and trial Jury recalled.

Joseph E. Griffin, being first duly sworn, testified for and in his own behalf.

At 3:10 o'clock p.m. Court duly admonished the Trial Jury and continued cause to 3:16 o'clock p.m.

Entered Court Journal No. G-16, Page No. 374, May 28, 1948. [7]

In the District Court for the Territory of Alaska,
Third Division

No. A-4586—Civil

ARTHUR J. OSZMAN,

Plaintiff,

vs.

ALASKA AIRLINES, an Alaskan Corporation,
Defendant.

JUDGMENT

The above-entitled action came on regularly for trial commencing on the 27th day of May, 1948, before the above-entitled Court at Anchorage, Alaska,

the plaintiff, Arthur J. Oszman, being present in person and represented by McCutcheon & Nesbett, his attorneys, and the defendant, Alaska Airlines, Inc., being represented by the person of Joseph E. Griffin and represented by Cuddy & Kay, its attorneys. A jury of twelve persons was regularly impanelled and sworn to try the cause and testimony, both oral and documentary, having been introduced and admitted on behalf of the plaintiff and the defendant, whereupon the Court instructed the jury upon the law in the matter and counsel for plaintiff and defendant argued the matter to the jury and the jury retired to consider their verdict. Upon stipulation of counsel for plaintiff and counsel for defendant at the time the jury retired, the jury was directed to bring in a sealed verdict, returnable at 10:00 o'clock a.m. on the 29th day of May, 1948. Thereupon and at 10:00 o'clock a.m. on the 29th day of May, 1948, the jury returned into Court and returned a sealed verdict, which upon being unsealed in open Court and in the presence of the jury, was found to be a verdict in favor of the plaintiff, reading as follows: "We the jury duly selected, impanelled and sworn to try the above-entitled cause, do find for the plaintiff and against the defendant and find that the plaintiff is entitled to recover of and from the defendant the sum of Eighteen Hundred Forty and 53/100 Dollars (\$1840.53), together with interest thereon at the rate of Six per cent (6%) per annum as claimed in the plaintiff's complaint. Dated at Anchorage, Alaska, this 28th day of May, 1948. M. B. Ames, Foreman." [8]

Wherefore by virtue of the law and by reason of the premises aforesaid, It Is Hereby

Ordered, Adjudged and Decreed that judgment be and is hereby given in favor of the plaintiff, Arthur J. Oszman in the sum of Eighteen Hundred Forty and 53/100 Dollars (\$1840.53) together with interest thereon at the rate of Six per cent (6%) per annum, plus plaintiff's costs and disbursements in this action incurred to be taxed by the Clerk of the Court in the manner provided by law in the sum of Thirty Dollars (\$30.00) and an Attorney's fee in the sum of Four Hundred Dollars (\$400.00) to be fixed by the Court, a total of Two Thousand Five Hundred Forty and 82/100 Dollars (\$2,540.82).

Dated at Anchorage, Alaska, this 2nd day of July, 1948.

/s/ ANTHONY J. DIMOND,
Judge of the District Court.

Received Service this 1st day of July, 1948, Wendell P. Kay, Attorney for Defendant.

Entered Court Journal No. G-17, Page No. 57,
July 2, 1948.

[Endorsed]: Filed July 1, 1948. [9]

[Title of District Court and Cause.]

MOTION FOR A NEW TRIAL

Comes now the defendant above named and moves this honorable court for an order setting aside and vacating the verdict and judgment of the jury heretofore rendered and entered in favor of the plaintiff

and against the defendant in the above-entitled action, and feeling aggrieved by such verdict and judgment moves that a new trial of said action be granted to said defendant for the following causes alleged by defendant as materially effecting its substantial rights and the rulings of the court which were prejudicial to its substantial rights, to-wit:

Errors in law occurring at the trial and excepted to by the defendant.

1. The Court erred in overruling the respective demurrers of defendant to the complaint of plaintiff on file herein.

2. The court erred in denying defendant's motion at the close of plaintiff's case to grant a nonsuit on the ground that plaintiff had failed to prove a case as laid in his complaint.

3. The court erred in failing to instruct the jury as requested by the Defendant in Defendant's proposed instructions 2, 3 and 5.

Insufficiency of the evidence to justify the verdict and judgment.

Wherefore, defendant moves said court to grant a new trial in the above-entitled action.

Dated this 1st day of June, 1948.

/s/ WENDELL P. KAY,

Attorneys for Defendant.

Copy Received June 1, 1948. Buell A. Nesbett.

[Endorsed]: Filed June 1, 1948. [10]

HEARING ON MOTION FOR NEW TRIAL

Now at this time hearing on motion for new trial in cause No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines, an Alaskan Corporation, defendant, came on regularly before the Court, the plaintiff not being present but represented by Buell A. Nesbett, of his counsel, the defendant not being present but represented by Wendell P. Kay, of its counsel. The following proceedings were had, to-wit:

Argument to the Court was had by Wendell P. Kay, for and in behalf of the defendant.

Whereupon the Court having heard the argument of counsel and being fully and duly advised in the premises, denied motion for new trial.

Entered Court Journal No. G-16, Page No. 388, June 4, 1948. [11]

[Title of District Court and Cause.]

**ORDER ALLOWING APPEAL AND FOR
SUPERSEDEAS**

The petition of Alaska Airlines, an Alaskan Corporation Defendants, in the above-entitled action, for an appeal from the final judgment rendered therein, is hereby granted and the appeal is allowed, and upon petitioners filing a bond in the sum of three thousand dollars with sufficient sureties and conditioned as required by law, the same shall operate as a supersedeas of the judgment made and en-

tered in the above cause and shall suspend and stay all further proceeding in this court until the termination of said appeal by the United States Circuit Court of Appeals for the Ninth Circuit.

/s/ ANTHONY J. DIMOND,
District Judge.

Dated at Anchorage, Alaska, this 23rd day of August, 1948.

Entered Court Journal No. G-17, Page No. 151,
Aug. 23, 1948.

[Endorsed]: Filed Aug. 23, 1948. [12]

[Title of District Court and Cause.]

PETITION FOR APPEAL

The above-named defendants, conceiving themselves aggrieved by the judgment made and entered on the 2nd day of July, 1948, in the above-entitled cause, do hereby appeal from the said judgment to the United States Circuit Court of appeals for the Ninth Circuit, for the reasons specified in the assignments of error, which is filed herewith, and said defendants pray that this appeal may be allowed, that a citation may issue according to law, and that a transcript of the record, proceedings and documents upon which said judgment was made, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Petitioners further pray that a supersedeas may be granted pending the final disposition of this

cause, and that the amount of surety may be fixed by the order allowing the appeal.

Dated at Anchorage, Alaska, this 17th day of August, 1948.

/s/ WENDELL P. KAY,
Attorney for the Defendants.

[Endorsed]: Filed Aug. 17, 1948. [13]

[Title of District Court and Cause.]

ASSIGNMENTS OF ERROR

Now comes the defendant and appellant herein and file the following assignment of error upon which they will rely in the prosecution of their appeal to the United States Circuit Court of Appeals for the Ninth Circuit, from the 2nd day of July, 1948, by the above-entitled court, as follows, to-wit:

I.

That the court erred in overruling the demurer of defendant to the complaint of plaintiff on file herein, to which ruling defendant excepted and the exception was allowed.

II.

That the court erred in denying defendant's motion at the close of plaintiff's case to grant a non-suit on the ground that plaintiff had failed to prove a case as laid in his complaint, to which ruling defendant excepted and the exception was allowed.

III.

That the court erred in again denying defendant's motion for a non-suit at the close of the case on the ground that plaintiff had failed to prove a case as laid in his complaint, to which ruling defendant excepted and the exception was allowed.

IV.

That the court erred in denying defendant's motion for a judgment notwithstanding the verdict on the ground that the plaintiff had failed to prove a case as laid in his complaint, and, further, the plaintiff had failed to sustain the allegations of the complaint or of the relief demanded therein, to which ruling defendant excepted and the exception was allowed.

V.

That the court erred in failing to instruct the jury, as requested by the defendant in the defendant's proposed instructions numbered 2, 3, and 5, to which ruling the defendant excepted and the exception was allowed.

Wherefore, defendant and appellant pray that the judgment in the above-entitled cause be reversed and the cause remanded, with instructions to the trial court as to further proceedings therein and for such other than further relief as may be just in the premises.

CUDDY AND KAY,
By WENDELL P. KAY,
Attorneys for Defendant.

CERTIFIED COPY

United States of America,
Third District of Alaska—ss.

I, M. E. S. Brunelle, Clerk of the United States District Court in and for the Third District of Alaska, do hereby certify that the annexed and foregoing is a true and full copy of the original Assignment of Error, in cause No. A-4586, entitled Arthur J. Oszman, plaintiff vs. Alaska Airlines, an Alaskan Corporation, Defendant, now remaining among the records of the said Court in my office.

In Testimony Whereof, I have hereunto subscribed by name and affixed the seal of the aforesaid Court at Anchorage, Alaska, this 17th day of May, A.D. 1949.

(Seal)

M. E. S. BRUNELLE,
Clerk.

By /s/ KATHRYN HOFF,
Deputy Clerk.

[Endorsed]: Filed Aug. 23, 1948.

[Title of District Court and Cause.]

PRAECEIPE FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court, Third Division,
Territory of Alaska:

You are hereby requested to make a transcript of record to be filed in the United States Court of Appeals for the Ninth Circuit, pursuant to an Appeal taken in the above-entitled cause, and to include in said transcript of record, the following papers of record in said cause, to-wit:

1. Complaint.
2. Demurrer of Defendant.
3. Minute Order Overruling Demurrer of Defendant.
4. Answer of Defendant.
5. Minute Order Denying Motion for dismissal on demurrer and failure to prove *prima facie* case.
6. Judgment.
7. Motion for New Trial.
8. Minute Order Denying Motion for New Trial.
9. Order Allowing Appeal and Supersedeas.
10. Order Settling Bill of Exceptions.
11. Petition for Appeal.
12. Praeceipe for Transcript of Record.
13. Proposed Bill of Exceptions.

14. Citation on Appeal.
15. Bill of Exceptions. [14]
16. Stipulation re Bill of Exceptions.
17. Order Settling Bill of Exceptions.
18. This Praeclipe.

Respectfully,

/s/ WENDELL P. KAY,
Attorney for Defendant,
Alaska Airlines.

Service admitted this 16th day of March, 1949.

/s/ J. L. McCARREY, JR.,
Attorney for Plaintiff.

[Endorsed]: Filed March 17, 1949. [15]

In the District Court for the Territory of Alaska,
Third Division, Anchorage, Alaska

No. A-4586

ARTHUR J. OSZMAN,

Plaintiff,

vs.

ALASKA AIRLINES, an Alaskan Corporation,
Defendants.

CITATION ON APPEAL

To the Plaintiff, Arthur J. Oszman, and his Attorneys, Buell Nesbett & Stanley J. McCutcheon:

You and each of you are hereby cited and admonished to appear in the United States Circuit Court of Appeals for the Ninth Circuit, to be held at San

Francisco, in the State of California, forty (40) days from the date of this citation, pursuant to the order allowing appeal on file in the office of the Clerk of the District Court for the Territory of Alaska, Third Division, in that certain action pending in said District Court, entitled, "Arthur J. Oszman, Plaintiff, vs. Alaska Airlines, an Alaskan Corporation, Defendants," being No. A-4516 in the files of said District Court, and wherein Alaska Airlines, an Alaskan Corporation, are appellants and Arthur J. Oszman is appellee, to show cause, if any there be, why the judgment rendered against Alaska Airlines, an Alaskan Corporation, should not be corrected and why speedy justice should not be done to the parties in the premises and in that behalf.

Witness the Honorable Anthony J. Dimond, District Judge for the Territory of Alaska, Third Division, this 23rd day of August, 1948, and of the independence of the United States the 172nd.

/s/ ANTHONY J. DIMOND,
District Judge.

Entered Court Journal No. G-17, Page No. 152,
Aug. 23, 1948.

[Endorsed]: Filed Aug. 23, 1948. [16]

[Title of District Court and Cause.]

BILL OF EXCEPTIONS

Be It Remembered:

That this cause came on for trial before the above-entitled Court, sitting at Anchorage, Alaska, on the 27th, 28th and 29th days of May, 1948, the plaintiff appearing in person and by his attorney, Buell A. Nesbett, and the defendant, Alaska Airlines, appearing by its attorney, Wendell P. Kay, and the following proceedings were had. A jury having been impanelled and sworn did at the conclusion of the trial of said action render its verdict for the plaintiff and against the defendant and found that the plaintiff was entitled to recover of and from the defendant the sum of \$1,840.53.

The complaint in the above-entitled action, which the verdict of the jury was rendered on, reads as follows:

“COMPLAINT

The plaintiff complains of defendant, and alleges:

I.

That during all the times herein mentioned the defendant was and now is a domestic corporation, organized and existing under and by virtue of the laws of the Territory of Alaska, with an office for the transaction of business in the City of Anchorage, Third Division, Territory of Alaska.

II.

That between the 1st day of May, 1944, and the 31st day of March, 1947, at the request of the de-

fendant, the plaintiff expended the sum of One Thousand Eight Hundred Forty and 53/100 Dollars (\$1,840.53), while in the performance of his duties as District Traffic Manager for defendant in the City of Juneau, Territory of Alaska, and Seattle, Washington, for the use and benefit of defendant, as more particularly set forth in Exhibit "A," attached hereto and made a part hereof. [17]

III.

That the said monies were expended by plaintiff in the furtherance of defendant's business interest and solely in reliance on defendant's verbal promise to repay plaintiff for said expenditures.

IV.

That plaintiff has repeatedly demanded payment of same from defendant, but defendant has not repaid the same, nor any part thereof.

Wherefore, plaintiff prays judgment against defendant in the sum of One Thousand Eight Hundred Forty and 53/100 (\$1,840.53) Dollars, with interest at the rate of six (6) per cent per annum on each item from the date of the expenditure of the money represented by each item, for costs of suit, a reasonable attorney's fees and for such other and further relief as to the Court may seem proper.

McCUTCHEON & NESBETT,
Attorneys for Plaintiff.

By /s/ BUELL A. NESBETT.

United States of America,
Territory of Alaska—ss.

Arthur J. Oszman, being first duly sworn, on oath, deposes and says:

That he is the plaintiff in the above-entitled action; that he has read the foregoing Complaint, knows the contents thereof, and the same is true as he verily believes.

/s/ ARTHUR J. OSZMAN.

Subscribed and Sworn to before me this 19th day of June, 1947.

[Seal] /s/ S. J. McCUTCHEON,
Notary Public in and for
Alaska.

My commission expires: 12/28/47."

To the foregoing Complaint, a Demurrer was filed by the defendant, Alaska Airlines, reading as follows:

“DEMURRER

Comes now the above-named defendant, by his attorneys W. N. Cuddy, and E. L. Arnell, and demurs to the plaintiff's complaint in the above-entitled cause upon the ground that; said

(a) said complaint does not state facts sufficient to constitute a cause of action against the defendant, and

(b) That said complaint does not state facts sufficient to constitute a cause of action.

/s/ W. N. CUDDY,
Attorney for Defendant.”

Thereafter, the following proceedings were had before the Court on the argument and ruling in regard to said Demurrer: [18]

M. O. OVERRULING DEMURRER

Now at this time the plaintiff not being present but represented by Buell A. Nesbett of his counsel, the defendant not being present but represented by Edward L. Arnell of its counsel, the following proceedings were had, to-wit:

Argument to the Court was had by Edward L. Arnell, for and in behalf of the defendant.

Whereupon the Court having heard the argument of respective counsel in cause No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines, defendant, overruled Demurrer and defendant given until Monday, August 18, 1947, to file Answer."

Thereupon, an Answer was filed by the defendant to the Complaint of the plaintiff, the Answer reading as follows:

"ANSWER
No. A-4586

Comes Now, the above-named defendant and for answer to the Plaintiff's complaint admits, denies and alleges as follows:

I.

That the defendant is a corporation organized and existing under and by virtue of the laws of the Territory of Alaska, and as such a corporation is qualified, according to law, to defend this

action, said corporation having paid its license tax for the year 1947, and filed its annual reports last due.

II.

The defendant denies all allegations set forth in paragraphs II, III and IV, of Plaintiff's complaint.

Wherefore, the Defendant, having answered plaintiff's complaint, prays that the same be dismissed and that the defendant be awarded its costs incurred and expended herein including a reasonable attorney's fee to be allowed by the Court.

ALASKA AIRLINES,
An Alaska Corp.,

By /s/ J. E. GRIFF,
Treasurer.

United States of America,
Territory of Alaska—ss.

This Is to Certify that on this 18th day of August, 1947, before me, the undersigned, a Notary Public in and for the Territory of Alaska, duly commissioned and sworn as such, personally came J. E. Griff, known to me and known to be the officer, to-wit: the treasurer of the above-named Corporation, that he is authorized according to law for and on behalf of such Corporation to make this verification, that he has read the foregoing answer to plaintiff's complaint, knows the contents thereof and the same is true as he verily believes.

Witness my Hand and Notarial Seal the day and year last above written.

[Seal] /s/ W. N. CUDDY,
 Notary Public in and for
 Alaska.

My commission expires: 8/29/49." [19]

Thereafter, the cause came on for trial before this Court, at ten o'clock a.m. on Thursday, May 27, 1948, and the following proceedings were had: [20]

TRANSCRIPT OF PROCEEDINGS

The above-entitled matter came on regularly for hearing in open court at Anchorage, Alaska, at 10:00 o'clock a.m. of Thursday, May 27, 1948, before the Honorable Anthony J. Dimond, United States District Judge.

The plaintiff was present in person with his counsel, Mr. Buell A. Nesbett of McCutcheon and Nesbett of Anchorage.

The defendant company was represented by Mr. Wendell P. Kay, its counsel, of Cuddy and Kay of Anchorage.

A Jury was duly selected, impaneled and sworn.

Opening statement to the jury was had by Mr. Nesbett for and in behalf of the plaintiff.

Opening statement to the jury was had by Mr. Kay for and in behalf of the plaintiff.

The Court: Counsel for plaintiff may call a witness.

Mr. Nesbett: Mr. Oszman.

The Court: Mr. Oszman may be sworn.

ARTHUR OSZMAN,

being first duly sworn, testified in his own behalf as follows:

Direct Examination

By Mr. Nesbett:

Q. Mr. Oszman, state your full name to the Court, please, and spell your last name.

A. Arthur Oszman, O-s-z-m-a-n. [21]

Q. And what is your business profession, Mr. Oszman? A. Salesman.

Q. And how long have you lived in Alaska?

A. Five years.

Q. How long have you lived in Anchorage?

A. 13 months.

Q. Are you married? A. Yes.

Q. Do you have children? A. Three.

Q. Mr. Oszman, were you employed by Alaska Airlines at any time during the year 1944?

A. Starting in May--on the fourth or fifth day of May.

Q. Who employed you, Mr. Oszman?

A. Mr. Pollock, who was then operations manager of the company.

Q. Where were you employed?

A. To be based at Juneau, Alaska.

Q. Where were you employed? Where did Mr. Pollock employ you?

A. At the time I was in Fairbanks at the Air

(Testimony of Arthur Oszman.)

Transport Command leased out by Northwest as a civilian technician.

Q. Where was your home at that time?

A. Minneapolis.

Q. I will ask you whether or not Mr. Pollock offered to pay your air transportation to Alaska as a part of the employment contract?

Mr. Kay: Your Honor, I must object to the form of these questions. There is no necessity for leading this witness, who appears to be an intelligent person.

The Court: Objection is sustained.

Mr. Nesbett: Mr. Oszman, will you state the details of this employment contract with Mr. Pollack?

Mr. Kay: I object to that as calling for a conclusion. [22]

The Court: You can state what was said between you; overruled.

Mr. Nesbett: You may answer.

A. Mr. Pollack merely said that at the end of six months my fare would be reimbursed, which is and has been a policy of the air industry after—generally after 12 months employment.

Mr. Kay: Your Honor, I object to the last part of that answer and move it be stricken.

The Court: It may be stricken. It is not responsive.

Mr. Nesbett: Mr. Oszman, do you know that that was the policy of Alaska Airlines at that time?

A. Yes.

(Testimony of Arthur Oszman.)

Mr. Kay: Now, your Honor—

Mr. Nesbett: If your Honor please, these repeated objections can be made, but I think Mr. Oszman had a perfect right to state what he understood to be a fact of his employment by Alaska Airlines.

Mr. Kay: Counsel is familiar, I believe, with the proper method of examining a witness on direct examination.

The Court: Not his own conclusion.

Mr. Nesbett: Mr. Oszman, did you have to pay your own transportation to Alaska?

A. Yes, it was purchased in St. Paul via Northwest to Winnipeg and Canadian Pacific from Edmonton to Fairbanks, and I was hauled from Fairbanks back into Juneau on a company aircraft.

Q. And what did that transportation cost you to Fairbanks? A. \$219.30, as I recall.

Q. And, Mr. Oszman, did you remain continuously in the employ of the company for a period of six months subsequent to May 5, 1944?

A. It was in excess of 13 months.

Q. Mr. Oszman, did you demand reimbursement from the company for the cost of your air transportation to Fairbanks?

A. There were frequent changes in the executive personnel of the company— [23] six during that period of time—and it was difficult to have any of them, it seemed, get a clear picture of it, although none of the six ever denied it and I have

(Testimony of Arthur Oszman.)

correspondence where they merely wanted ample time to go into it in detail.

Q. Did you demand reimbursement of that amount of the company?

A. Yes, frequently.

Q. Have you ever been paid that amount?

A. No.

Q. Mr. Oszman, I show you this paper and ask if you can identify it.

A. This is a copy of the air transportation receipt which was forwarded to the Treasury Department in Anchorage.

Q. Treasury Department of—?

A. Alaska Airlines, in Anchorage.

Q. And who forwarded it?

A. One of the girls in the office—the Juneau office.

Q. And what does that document purport to relate to?

A. That is the amount I paid out for air fare between St. Paul and Fairbanks, Alaska, in May of '44.

Q. Was the original of that document sent to Alaska Airlines?

A. On one occasion the passenger's receipt was attached to one of the copies, I am quite certain—

Mr. Nesbett: Your Honor, we would like to offer

(Testimony of Arthur Oszman.)

this in evidence (handing document to Mr. Kay).

Mr. Kay: May I ask a few questions with regard to this?

The Court: Yes.

Mr. Kay: Who prepared this?

The Witness: A girl in the Juneau office and one in the Seattle office. There were merely copies of it and additions to it as the fund increased.

Mr. Kay: Did you see them prepared?

The Witness: Yes, I did.

Mr. Kay: You observed them typing it? [24]

The Witness: That is right.

Mr. Kay: Who were the girls?

The Witness: The girl in Juneau's name was May Nelson.

Mr. Kay: They were employees of the Alaska Airlines at that time?

The Witness: They were passenger agents and also office secretaries.

Mr. Kay: Who mailed this? Was it ever mailed?

The Witness: They were put aboard or—or put in the company mail, which was the usual procedure and I believe still is on company material.

Mr. Kay: Who put it in the company mail?

The Witness: I am not certain of that. It's merely left in the office basket—in the outgoing basket.

Mr. Kay: Did you personally place it in the company mail?

The Witness: No, I didn't. I merely let the girl complete it and put it in an envelope.

(Testimony of Arthur Oszman.)

Mr. Kay: Do you know of your own knowledge whether or not it was placed in the company mails?

The Witness: I am certain that it was put in the outgoing basket with other correspondence that arrived in Anchorage.

Mr. Kay: Do you know, of your own personal knowledge, whether or not this thing was placed in the company mail?

The Witness: It was in the outgoing mail basket.

Mr. Kay: That only requires a yes or no answer, Mr. Oszman. Do you know of your own knowledge whether or not this document was placed in the company mail--in the outgoing mail?

The Witness: In the outgoing mail basket, yes; that's as far as I could follow it.

Mr. Kay: You don't know of your own knowledge whether it actually was placed aboard, or placed in the course of mail delivery?

The Witness: That I couldn't be certain of.

Mr. Kay: Well, I object to the introduction of it. [25]

The Court: You may bring it up.

Mr. Nesbett: May I ask one question, your Honor?

The Court: Surely.

Mr. Nesbett: In the ordinary course of Alaska Airlines business the original of that statement would have reached the company officials, would it not, if placed in the outgoing basket?

A. Yes; even payroll checks, incoming or out-bound from the office, were handled in that man-

(Testimony of Arthur Oszman.)

ner. Regardless of importance or lack of importance of correspondence it was handled in the same manner.

The Court: Objection is overruled. It may be admitted and marked Plaintiff's Exhibit No. 1. It may be read to the jury.

(Plaintiff's Exhibit No. 1 admitted in evidence.)

The Court: In this case as in every case exception is noted as of course to all adverse ruling of the Court.

Mr. Kay: Thank you, your Honor.

Mr. Nesbett: Mr. Oszman, do you know of your own knowledge that any other employee of Alaska Airlines has been reimbursed for transportation to Alaska? A. Yes.

Mr. Kay: I object, your Honor, as immaterial.

The Court: Overruled.

The Witness: Yes, Mr. Krug, who is at the present time with Northern Airlines, had his fare reimbursed from Milwaukee, Wisconsin, to Anchorage, Alaska.

The Court: When was that?

The Witness: Within the last six months.

The Court: Well, I think that is too remote. If counsel is seeking to establish a custom, it must be a custom that existed at the time and not some years later. The objection will be sustained and the jury instructed to disregard the answer as to what happened six months ago.

Mr. Nesbett: Do you know of any other prior

(Testimony of Arthur Oszman.)

instances, specifically— [26] if you cannot state the name of the employee do not attempt to.

A. Offhand, no. That is the only specific instance.

Q. Mr. Oszman, can you identify this paper (handed paper to the witness) ?

A. This is a letter I forwarded to the Treasurer—present Treasurer, Joe Griffin, and—

Q. Is that Mr. Griffin sitting at the desk with Mr. Kay? A. Yes.

Q. What is the date on that letter?

A. March 13.

Q. Did you sign the original?

A. Yes, I did.

Mr. Kay: What year?

The Witness: Of '47.

Mr. Nesbett: And how was the original handled in the office routine?

A. In the same manner in which the first had been handled: Set in the outgoing mail basket with all company and all other mail—outgoing mail.

Mr. Nesbett: We offer this in evidence, your Honor (handed document to Mr. Kay).

The Court: It may be shown to counsel for the defendant.

Mr. Kay: Who prepared this document, Mr. Oszman?

The Witness: That was prepared by the girl in the Seattle office, who is passenger agent as well as personal secretary.

Mr. Kay: Did you dictate this to her?

(Testimony of Arthur Oszman.)

The Witness: I did.

Mr. Kay: Did you observe her in the process of typing?

The Witness: I did.

Mr. Kay: And did you observe it in the process of being mailed?

The Witness: Yes, in the same manner.

Mr. Kay: Do you personally know it has been mailed?

The Witness: In the same manner as the other was handled, which was company procedure. [27]

Mr. Kay: This was in March, 1947?

The Witness: That is right.

Mr. Kay: When did you receive your notice you have been terminated with Alaska Airlines?

The Witness: About the 14th or 15th.

Mr. Kay: 14th or 15th of what month?

The Witness: Of that same month.

Mr. Kay: Of March?

The Witness: Of March, yes.

Mr. Kay: 1947?

The Witness: That is right.

Mr. Kay: In other words, this was prepared two days before you received your notice of termination?

The Witness: It had been set up, yes.

Mr. Kay: Two days before?

The Witness: Yes.

Mr. Kay: Your Honor, I object to the introduction of this document as a self-serving document, as being prepared for this hearing or a

(Testimony of Arthur Oszman.)

hearing on behalf of the defendant, containing merely an unconnected statement of views of his concerning company liability.

(Document was handed to the Court.)

Mr. Nesbett: If your Honor please, it was prepared before any action was commenced of this nature and while he was still in the employ of the company and as correspondence from one official of the company to another.

Mr. Kay: Your Honor, the letter contains a great number of self-serving statements—declarations on his part—concerning which he is qualified to testify if he wants to here today. There is no necessity of introducing a self-serving summary of his claim in evidence.

Mr. Nesbett: It shows amongst other things his demand of the company for reimbursement, your Honor, and substantiates his oral testimony.—

Mr. Kay: We can stipulate—— [28]

Mr. Nesbett: Just a moment, Mr. Kay—and shows, amongst other things, the attitude of company officials on the matter.

The Court: I think it is not admissible. Objection is sustained. If counsel desires it may be filed, or it may be marked for identification.

Mr. Nesbett: Identification, then, if your Honor please.

The Court: It may be marked for identification as Plaintiff's Exhibit No. 2, but will not be ad-

(Testimony of Arthur Oszman.)

mitted at this time but may be filed and thus become a part of the record.

(Plaintiff's Exhibit No. 2 marked for identification.)

Mr. Nesbett: Mr. Oszman—

The Court: Pardon me, I would like to have the date.

The Clerk: March 13, 1947.

The Court: All right. Mr. Nesbett.

Mr. Nesbett: Can you identify this document, Mr. Oszman? (Handed another document to witness.)

A. This is a recap of the monthly statements which had been forwarded to the Anchorage Treasury Department on numerous occasions in an attempt to obtain collection of the money spent in the efforts of the company while at Juneau through these dates.

Q. And when was that recap prepared?

A. The latter part of—that's in March of '45.

Q. And to who was the original of that recap sent, Mr. Oszman, if you know?

A. That was sent--then there were two changes in the Treasury Department within three weeks or four weeks—it was either—I had addressed to Odenwalder, but he had been replaced by another Treasurer in the meantime—but it had been addressed to Odenwalder.

Q. And what was his position?

A. He also was—his position was Treasurer of Alaska Airlines.

(Testimony of Arthur Oszman.)

Q. And was the original of that recap forwarded to him by you? [29] A. Yes.

Q. In the Regular office routine or personal—

A. Regular company procedure.

Mr. Nesbett: We offer this in evidence, if your Honor please (handing to Mr. Kay).

The Court: Do you offer it in evidence?

Mr. Nesbett: Yes, your Honor.

The Court: It may be shown to counsel.

Mr. Kay: Who prepared this statement?

The Witness: I prepared that.

Mr. Kay: Personally, on the typewriter?

The Witness: No, dictated it to the girl in the office.

Mr. Kay: Now, what did you use as the basis for preparing this recap, Mr. Oszman?

The Witness: My copies of the monthly statements which had been on numerous occasions forwarded to the Anchorage Treasury Department.

Q. (By Mr. Kay): Where are your copies of the statement at the present time?

The Witness: The last group were in desperation handed personally to, I believe, the fourth Treasurer of the company within a period of five weeks.

Mr. Kay: I object to that portion of your answer as unresponsive.

The Witness: Placed on his desk at Merrill Field in his private office.

Mr. Kay: May the answer of the witness be stricken as unresponsive?

(Testimony of Arthur Oszman.)

The Court: Motion is denied—or does counsel wish to ask any more questions?

Mr. Kay: Then you do not have in your possession at the present time copies——?

The Witness: No, he agreed he would take care of it, but things were in such an unsettled condition he wanted me to allow them a little more time, which I readily agreed to, and he held all my copies and I held only the recap.

Mr. Kay: At what time was that, Mr. Oszman?

The Witness: That was the early part of June in 1945, as I was in Anchorage for probably a six-weeks period, I was transferred up here with the organization [30] and elevated in position to General Traffic Manager.

Mr. Kay: May it please the Court, I object to the admission of the document on the ground it is a self-serving document, hearsay, and it is not the best evidence.

The Court: The objection is overruled and it may be admitted and marked Plaintiff's Exhibit No. 3 and it may be read to the jury.

(Plaintiff's Exhibit No. 3 admitted in evidence.)

The Court: Is there any date on that?

(Paper was handed to the Court by the Clerk.)

The Court: Ladies and gentlemen of the jury, this paper is admitted to illustrate the testimony of the witness as to just what his claim is and

(Testimony of Arthur Oszman.)

upon the point as to whether or not he presented the claim to the company. The fact that certain figures are written in this paper does not mean necessarily that those amounts are due. That depends upon the testimony to be given. But it may be admitted, nevertheless, for the purpose as stated. It may be read to the jury.

(Mr. Nesbett read plaintiff's Exhibit No. 3 to the jury.)

Mr. Nesbett: Mr. Oszman, looking at the entry—what is the first monthly entry on that?

A. May, 1944.

Q. Now, Mr. Oszman, is it your testimony that for the month of May, 1944, you sent to the Alaska Airlines Office a detailed statement of expenses incurred during that month?

A. That is true.

Q. And that detailed statement would show what amount then? A. Yes, the 7425.

Q. And did you save copies of those detailed statements? A. I did.

Q. And what became of the copies you saved?

A. In June of 1945 my copies were left with Mr. Hedman who was then the new Treasurer of Alaska Airlines—put on his desk—and he admitted they were long overdue but wanted me to give him more time because he had had so many other problems.

Q. Why did he ask for your copies rather than use the original copies?

(Testimony of Arthur Oszman.)

A. They thought it was easier than to attempt to go through their records, and he had on one occasion but was unable to locate any.

Q. And then, did you for each of the months set out in that recap statement prepared detailed statements and mail them to the Alaska Airlines head office?

A. Yes, as was the company policy.

Q. Now, Mr. Oszman, as District Traffic Manager in Juneau, will you describe to the Court and the jury the means by which these personal expenses were incurred?

A. Well, there were various items and reasons: Often I had wire requests from the general office, or officials of the company to either entertain or to personally attend to an arrival of a passenger or personage that they believed important enough to give special attention. Then there were times that I made purchases for Army personnel at locations along the coast where we had stopped for fuel—we had no company employees and Army personnel would service our equipment and in return for that the company purchased magazines and beer—things of that sort—for the Army personnel, and often was the case there wasn't enough money in the cash drawer and I would advance the cash in order to get it aboard the next departure and hope that the drawer would balance out sufficiently so that I could recover my personal loan or outlay of cash. There were various expenditures. Often they were for rooms for

(Testimony of Arthur Oszman.)

passengers brought in and were misinformed and just ticketed and put into Juneau without confirmed space beyond. Passengers were broke and I paid their hotel bills, or advanced them money for a meal or two until they were able to wire and finance themselves through another source. [32]

Q. Was that a part of your duties?

A. That they requested I do whenever in my opinion I believed the passenger was justified in a complaint of that nature. They were mishandled, and they permitted me to do that because it had been my field of work for eight years prior to that with Northwest Airlines where I represented them on the West Coast as an assistant to the West Coast Sales Manager. It was a common practice.

Q. Mr. Oszman, as District Traffic Manager in Juneau during the period set out in that recap, did you have a fund to operate on?

A. No other than a hundred dollars petty cash to begin with, which was not increased, I don't believe, for eight or nine months following my arrival in Juneau. However, at that time the fare from Juneau to Anchorage was \$102.50. We also had an office in Seattle which ticketed passengers regardless of whether we had aircraft available or able to operate over the Juneau-Anchorage route. These passengers would get into Juneau and demand their money be refunded so they could continue by boat. So naturally, the first refund I would make would overdraw my fund by \$2.50; and it

(Testimony of Arthur Oszman.)

was often the occasion I would have to withhold my bank deposit because I would have 18 or 20 arrivals to hold to continue by boat because they had no means to continue to Anchorage by our system, therefore, I was authorized to refund their tickets. Then again I often went into my personal funds so that I could refund those tickets.

Q. Then, Mr. Oszman, were you required at the end of every month to account for all moneys expended? A. Yes; which was done.

Q. Was it possible that you could carry over your personal expenses and deduct them from the petty cash fund of the succeeding months?

A. No. Following the first month I was always in arrears—constantly in arrears—because they were never returned, sometimes for three to four months.

Q. What was never returned?

A. The petty cash checks or miscellaneous checks which were requested and supported by the type of form which I had used to submit the expenses of that statement.

Q. Do you know how the mail between Juneau and Anchorage—Alaska Airlines mail—was handled at that time? [33]

A. It was handled in the same manner, via the ship, in the pilot's pouch. All company mail was what they considered "pilot's pouch"—handled in the same manner, just put in an outgoing basket and first departure would have that put

(Testimony of Arthur Oszman.)

aboard the first available aircraft to the Anchorage area.

Q. Mr. Oszman, did you ever at any time receive any of the amounts set out opposite the months stated in that recap? From Alaska Airlines?

A. No.

Q. Have you demanded payment of the total amount due you set out there on the recap?

A. Frequently.

Q. Were you promised by any of the company officials that you would be reimbursed for those expenses?

Mr. Kay: I object, your Honor,—

Witness: Yes, on each occasion.

Mr. Kay: ——continual leading of the witness.

The Court: Objection is sustained.

Mr. Nesbett: Mr. Oszman, can you identify this paper (handing paper to the witness)?

A. This is a company form, an "avoid oral instructions" form, used by the company in interdivision correspondence.

Q. What is it?

A. It is from Harold Nordman of the Treasury Department in Anchorage and it is addressed to me in Juneau.

Q. Does it have a date?

A. November 16, 1944.

Q. Do you recognize Mr. Nordman's signature?

A. I do.

Q. And his handwriting? A. I do.

Q. Is that his handwriting?

(Testimony of Arthur Oszman.)

A. That is his handwriting. Did you want me to read it? [34]

(Mr. Nesbett took paper and handed to Mr. Kay.)

Mr. Kay: Who did you say Harold was?

The Witness: He was acting Treasurer at the time of that writing. As I said, they frequently changed. They had about six treasurers within—

Mr. Kay: What was Harold's last name?

The Witness: Nordman.

Mr. Kay: You received other written instruments from Harold?

The Witness: Yes, I did.

Mr. Kay: And know that this is in Harold's handwriting?

The Witness: Yes, it is.

Mr. Kay: It is not written by you?

The Witness: No; that isn't close to my handwriting.

Mr. Kay: I object to the admission of the document on the grounds that it is hearsay.

The Court: Objection is overruled. It may be admitted and marked Plaintiff's Exhibit No. 4 and may be read to the jury.

(Plaintiff's Exhibit No. 4 admitted in evidence.)

The Court: May I see it?

(Clerk handed exhibit to Court.)

Mr. Kay: I would like that last objection to

(Testimony of Arthur Oszman.)

show I also object to it on the ground it lacks a proper foundation.

The Court: Objection will be overruled. These figures are not any too clear to me. It looks like "11/16/44"—is that your reading of it?

The Witness: That's right.

The Court: Very well.

(Mr. Nesbett then read Plaintiff's Exhibit No. 4 to the jury; then handed back to the witness.)

Mr. Nesbett: Now, Mr. Oszman, what checks does Mr. Harold Nordman refer to in the first paragraph of that memo?

Mr. Kay: I object to that question, your Honor, as not only leading but calling for a conclusion this witness cannot possibly know. He calls for a [35] conclusion from this witness as to what somebody else thought.

The Court: Overruled.

Mr. Nesbett: You may answer.

A. I naturally assumed they were to acknowledge my numerous requests for the expenses which were submitted month by month.

Q. Had you corresponded with Mr. Nordman on that subject?

A. Yes; and I had seen him in Juneau on one trip, and as all of us were very busy I naturally didn't press him and merely waited until he had sufficient time to go over the entire list.

Q. Entire list of what?

(Testimony of Arthur Oszman.)

A. Of the expense accounts which were submitted to him.

Q. And what is the date again on that?

A. November 16, 1944.

Q. Mr. Oszman, I show you this paper and ask you if it refreshes your memory as to other expenditures—other reasons why expenditures were made by you as District Traffic Manager and included in part on the recap sheets?

Mr. Kay: Could we know what the witness is referring—

The Court: Pardon me, I didn't understand you, Mr. Kay?

Mr. Kay: I just asked if we could know to what the witness is referring.

The Court: You may see the paper if you desire it. Let Mr. Kay look at the paper.

(Mr. Kay approached witness stand.)

Mr. Nesbett: Does that writing refresh your memory, Mr. Oszman, to the extent you can answer my questions?

A. Yes, it does. When I first came into Juneau and for months thereafter we had no company employees or facilities for handling the turn-around of our equipment. PanAm operated into Juneau and had a full staff of ground personnel which I used with the authority of our main office in Anchorage, and they permitted me to use my own judgment as to what I should pay them based on the frequency of our service in and out of that point. And often—we were never a scheduled car-

(Testimony of Arthur Oszman.)

ried, and often our ships were in while the Pan American employees [36] were off duty there while it was necessary for me to jump in a cab and take them out to the airport. If our ship required any maintenance, why, I paid them for that as well.

Q. How did you pay them?

A. Out of money out of my pocket—personal funds.

Q. Did you have the power to write checks on the company? A. Never.

Q. How long did that practice exist, Mr. Oszman?

A. During the entire time of my stay in Juneau.

Mr. Nesbett: This is a telegram, Mr. Kay. I want to show it to him to refresh his memory as to items of expenditure (handing paper to Mr. Kay).

Q. (Handing paper to Witness): Does that paper refresh your memory as to other expenditures made by you as District Traffic Manager?

A. Yes. This was signed by Mr. Duncan, who was then General Manager for Alaska Airlines, in August of 1944.

Q. Can you state what the nature of those expenditures were?

A. Authorizing me to purchase 50 gasoline drums at \$2.50 each and arrange with Standard Oil to fill with 91-Octane gasoline and ship to Gustavus on the Morrison-Knudsen barge, advise the date the gasoline would be unloaded at Gustavus and defer purchase of shacks temporarily, and defer to ob-

(Testimony of Arthur Oszman.)

tain house from one of the parties that got them.

Q. Mr. Oszman, what funds would you use to accomplish the ends requested?

A. The hundred dollar petty cash fund which they had for me to operate there in Juneau.

Mr. Nesbett: May we have five minutes, your Honor?

The Court: Court will stand in recess until two minutes past three.

(Whereupon recess was had at 2:53 o'clock p.m.)

After Recess

The Court: Without objection the record will show all members of the jury present. Counsel may proceed with examination of the witness. [37]

Mr. Nesbett: Mr. Oszman, can you identify this paper?

A. Yes, this is an office memo sent by Alaska Star Airlines, Anchorage office, with the signature by C. W. McMonagle, who was then treasurer—that's October 3, 1944.

Q. To whom is it addressed?

A. It is addressed to me in Juneau, Alaska.

Q. Is that the original of the memorandum?

A. That is the original outlining a method of—

Mr. Nesbett: That is all. (Took paper and handed to Mr. Kay.) We offer this in evidence, your Honor.

The Court: It may be shown to counsel for the defendant.

Mr. Kay: When did you receive this, Mr.——?

(Testimony of Arthur Oszman.)

The Witness: Within four or five days of the date that is identified there in the right hand corner.

Mr. Kay: Have you seen other instruments initialed by Mr. McMonagle?

The Witness: Yes, I had, frequently, during that period.

Mr. Kay: And are these Mr. McMonagle's initials on this?

The Witness: They are.

Mr. Kay: We have no objection to it.

The Court: It may be admitted and marked Plaintiff's Exhibit No. 5 and may be read to the jury.

(Plaintiff's Exhibit No. 5 admitted in evidence.)

The Court: What is the date of that?

The Clerk: October 3, 1944.

The Court: Counsel may proceed.

(Mr. Nesbett: Read Plaintiff's Exhibit No. 5 to the jury.)

Mr. Nesbett: Mr. Oszman, I will ask you whether or not you carried out the instructions contained in that letter? A. Yes, I did.

Q. I will ask you whether you were able to disburse the funds necessary to [38] carry out those instructions entirely from your petty cash fund?

A. Only at times.

Mr. Kay: Your Honor, I object again to the leading questions being continually asked by the counsel for the plaintiff.

The Court: Overruled as to this question.

The Witness: Only at times was it possible. As I said before, I was constantly in arrears due to this

(Testimony of Arthur Oszman.)

and various other requests from division points of authorized officials of the company for purchases of this nature and other nature. It was never possible to balance out and, therefore, necessary for me to take it out of personal funds.

Mr. Nesbett: I hand you Exhibit No. 3, the recap sheet, Mr. Oszman, and ask you whether or not any of the statements—monthly statements—set out in that recap, were ever objected to by Alaska Airlines officials?

A. They never were objected to. It was just that situation after situation arose. Sometimes it was financial, and naturally I was patient, and with numerous—or many promises, and I realized that they had problems as well as I in Juneau and didn't believe I was alone in them—I permitted this sort of thing to go on because I had the promises of each new official that it would be immediately taken care of.

Q. Did any official of the company even question any of those monthly statements after they were sent in as being incorrect? A. No.

Q. Can you identify this document, Mr. Oszman? (Handed document to the witness.)

A. This is a letter which I had made up while in Seattle during my period of employment with Alaska Airlines, again requesting the payments which were months and years in arrears, and this was addressed to the current Treasurer, J. E. Griffin.

Q. And who wrote the letter?

A. I wrote the letter.

Q. Is that a copy? [39]

A. Or rather, I dictated the letter.

Q. Is that a copy or the original? -

(Testimony of Arthur Oszman.)

A. This is merely a copy.

Q. To whom was the letter addressed?

A. To J. E. Griffin, the Treasurer of Alaska Airlines.

Q. And the date? A. March 13, 1947.

Q. Did you sign the original of that letter?

A. I signed the original.

Q. Was it prepared under your supervision?

A. Yes.

Q. Can you state whether or not the letter was handled in the regular office routine in respect of mailing?

A. Yes, with the procedure that was requested by the company in handling all mail.

Mr. Nesbett: We offer this copy of an original letter in evidence, your Honor. (Handed document to Mr. Kay.)

Mr. Kay: About when did you dictate this letter, Mr. Oszman?

The Witness: In the Seattle office of Alaska Airlines.

Mr. Kay: About when?

The Witness: About the ninth or tenth of March—it may have been—could have varied two or three days—it was in the notebook of the secretary for two or three days that I know of, because Mr. Hoppin, the president, was then in town and had urgent correspondence which was given priority over anything that the regional manager had.

Mr. Kay: Dated March 13: Is that the date on which it was dictated?

(Testimony of Arthur Oszman.)

The Witness: That was the date on which she had set it up in the typewriter.

Mr. Kay: But I say, you had dictated?

The Witness: I dictated it prior to that time.

Mr. Kay: And when did you receive your notice of termination with Alaska Airlines? [40]

The Witness: It was around the 15th of—it was between the 11th and the 15th of March.

Mr. Kay: As a matter of fact, wasn't it about the first of March or the end of February?

The Witness: No. I have a letter which was written to that effect, giving the termination date as the 24th of March.

Mr. Kay: When was that letter dated, do you know?

The Witness: It was dated in Anchorage on the eighth, but it was carried in the pocket of a company employee for a week or better, as he told me. He didn't know the contents of it and it was given to another employee at the Seattle field and eventually wound up in the Seattle office. That was as I recall it.

Mr. Kay: Your Honor, I object to the admission of this document on the grounds it is a self-serving instrument containing a great many hearsay and self-serving statements.

(Document was handed to the Court.)

The Court: Do you care to be heard on it? Objection will be sustained and the letter may be marked for identification as Plaintiff's Exhibit No. 6 and may be filed so as to become a part of the record.

(Testimony of Arthur Oszman.)

(Plaintiff's Exhibit No. 7 marked for identification.)

Mr. Nesbett: Mr. Oszman, when did you leave Alaska Airlines, while you were stationed in Juneau?

A. No, I was temporarily given a promotion in the Anchorage area as general traffic manager and spent probably six or seven weeks in Anchorage prior to going to Kodiak, but I was employed by Alaska Airlines until June 30, 1945.

Q. What was the date of your leaving your duties in Juneau, do you recall?

A. In May—about mid-May.

Q. And did you leave the employ of the company at that time?

A. No, it was merely a transfer to the Anchorage area.

Q. How long did you remain in the Anchorage area? [41]

A. About seven weeks, I believe.

Q. Were you in the employment of Alaska Airlines during that period? A. That's right.

Q. And where did you then go, Mr. Oszman?

A. Went to Kodiak Island where I had gone into another field. However, the owner of the business which I had taken, managed—taken over as manager—was an agent for Alaska Airlines and I continued in that capacity to represent Alaska Airlines until their certificate expired, which was in August—August 15, 1945.

Q. I will ask you whether or not you returned to

(Testimony of Arthur Oszman.)

the employment of Alaska Airlines subsequent to August of 1945?

A. On about approximately September 14, 1946.

Q. What occurred on that date?

A. I was reemployed by the airline and was to be—well, there was a program outlined and I accepted it. The provision in it was that I spend 30 days in Juneau and then to continue on into the States.

Q. What was a program, now? Explain it to the Court and jury.

A. Oh, they were desirous of operating in through the interior as well as along the coast, and they had wanted me to make surveys in the Midwest and that after these surveys were made that offices would be established and that I would have my choice of either the Minneapolis or the Chicago area. However, the 30 days was spent in Juneau—they were given an extension—the reason for going to Juneau was an extension of their certificate for a 30-day period only, and following that 30-day period I was started on the survey projects which they had previously outlined, and I was wired to continue into Seattle. From Seattle I was sent on into Minneapolis and St. Paul.

Q. How did you reach Juneau from Anchorage, Mr. Oszman?

A. I flew on Alaska Airlines on a proving flight, which has CAA personnel aboard. It is a requirement when a certificate such as that had been extended.

Q. How did your wife reach Juneau?

A. On Pacific Northern Airlines.

Q. Did she pay her fare—or do you know? [42]

A. I paid her fare. It was impossible to carry

(Testimony of Arthur Oszman.)

company employees and an officer of the company advised me to send her down on a carrier and I was—

Q. Can you identify that document? (Handed document to the witness.)

A. Yes, that is a request for reimbursement of the fund in the amount of \$80.50 expended for the wife's transportation from Anchorage to Juneau.

Q. Where was the original of that statement mailed?

A. It was mailed in the—set in the outgoing basket in the Juneau office.

Q. To whom was it sent?

A. To Mr. Griffin in Anchorage.

Q. Was that—the original of that statement signed by you? A. It was.

Q. Prepared under your supervision?

A. Yes.

Q. Can you state whether or not it was handled in the regular office routine with respect to mailing?

A. Yes, it was.

Mr. Nesbett: We offer this copy in evidence, your Honor. (Handed document to Mr. Kay.)

The Court: It may be shown to counsel for the defendant.

Mr. Kay: About when was this prepared, Mr. Oszman?

The Witness: The original was prepared approximately November of '46—the original.

Mr. Kay: About when?

The Witness: In October of '46, I would say—the original.

(Testimony of Arthur Oszman.)

Mr. Kay: The original? You mean—wasn't this copy prepared at the same time?

The Witness: That's merely a copy of—from a recap of expenses over a period of time.

Mr. Kay: That is—

The Witness: Merely a copy taken from a recap.

Mr. Kay: Was the original of this document sent to anyone? Is that a carbon copy?

The Witness: That is a carbon copy, yes.

Mr. Kay: Was the original sent to anyone?

The Witness: Yes, to Mr. Griffin in Anchorage.

Mr. Kay: And when was the original of this document prepared, of which this is a carbon copy?

The Witness: Either after my return to Juneau or after I was assigned to the Seattle office. I am not quite sure, but it was either in the Juneau office or the Seattle office. It was an Alaska Airlines office where we generally made up our expense accounts and took care of our correspondence.

Mr. Kay: Did you personally see this—there is a handwritten word on this: Was a handwritten word on the original which was sent to the Alaska Airlines office? I will show you.

The Witness: That I hadn't seen.

Mr. Kay: Was this handwritten word on there—on the original?

The Witness: I believe Mr. Nesbett wrote that in.

The Court: What was the answer?

The Witness: I believe Mr. Nesbett wrote that word in.

Mr. Kay: Then that word was not on the original instrument that was sent to—

(Testimony of Arthur Oszman.)

The Witness: No. However, expenses were always given in detail and the original was broken down so that it would be very clear to anyone—

Mr. Kay: The original? I don't understand what you mean.

The Witness: Each month we submitted expense accounts.

Mr. Kay: This is separate from an expense account?

The Witness: That was in addition to it, yes.

Mr. Kay: In addition?

The Witness: It was merely a copy—a file copy was all it was—merely a memorandum.

Mr. Kay: Well, I object to the introduction as being a self-serving [44] instrument—hearsay—it lacks a proper foundation.

(Document was handed to the Court.)

The Court: It may be admitted and the jury will disregard the word "wife" written on the body of the paper. What about the words "Harold Nordlund" in handwriting?

Mr. Nesbett: Do you object to those, Mr. Kay?

Mr. Kay: I would like to have the witness explain what they mean.

The Court: What does the name "Harold Nordlund" with a question mark after it written there—what does that mean?

The Witness: I believe that is your writing, isn't it, Buell?

Mr. Nesbett: I don't know. Let's see.

The Witness: It isn't mine. I didn't see any writing on it until it was handed to me.

(Testimony of Arthur Oszman.)

Mr. Nesbett: Well, that isn't my writing, your Honor, I don't know how it got there.

The Court: Well, the words may be stricken and the exhibit may go in otherwise over the objection of defendant as Plaintiff's Exhibit No. 7 to show that demand was made and to illustrate the testimony of the witness.

The Court: What is the amount?

The Clerk: \$80.50.

(Plaintiff's Exhibit No. 7 admitted in evidence.)

The Clerk: Do you wish me to strike out the words?

The Court: Yes, strike out, just with your pen, those two words and they will be disregarded by the jury.

It may be read to the jury.

(Mr. Nesbett read Plaintiff's Exhibit No. 7 to the jury.)

Mr. Nesbett: Did you pay that sum, Mr. Oszman, for the transportation of your wife to Juneau?

A. Yes, I did, as Alaska Airlines was not certified to carry passengers over that route. [45]

Q. I will ask you whether or not you were promised reimbursement by any official of the company for an amount—

A. She was put aboard Pacific Northern, instructed to—I was instructed to do so by the general traffic manager of the company, who was Mr. Edwards at that time.

(Testimony of Arthur Oszman.)

Q. Mr. Ben Edwards, you say?

A. Mr. Ben Edwards.

Q. And have you made other demands of the company for reimbursement of your wife's expenses for transportation to Juneau?

A. That is only one. Many of them I neglected—

Q. Have you ever been reimbursed that amount by the company? A. No.

Q. Can you state where you lived while you were on temporary duty in Juneau?

A. At the Gastineau Hotel.

Q. Can you identify this document? (Handing to witness.)

A. That's the Gastineau Hotel statement which I paid during that period of stay while with Alaska Airlines. I paid that with personal funds.

Q. Is that the original statement?

A. This, I believe, is. I am quite certain of it.

Q. And to whom is the statement made out?

A. To Mr. and Mrs. Art Oszman.

Q. And is the letterhead Gastineau Hotel?

A. Gastineau Hotel.

Mr. Nesbett: We offer this in evidence, your Honor. (Handed document to Mr. Kay.)

The Court: It may be shown to counsel.

Mr. Kay: Mr. Oszman, was Mrs. Oszman employed by the Alaska Airlines at that time?

The Witness: She was not. [46]

Mr. Kay: Who authorized—or did anyone ever authorize you to stay at the Gastineau Hotel—Alaska Airlines?

(Testimony of Arthur Oszman.)

The Witness: They generally wanted us to stay at the Baranof.

Mr. Nesbett: Just a moment, your Honor: This is not cross-examination. I understand Mr. Kay is just questioning the witness as to the validity—

The Court: I think the objection is well taken. There is no statement by the witness, as I recall, which would make the company liable for this expenditure.

Mr. Kay: Therefore, I object.

The Court: The objection is sustained at this time.

Mr. Nesbett: Your Honor, may we have the testimony of Mr. Oszman read back when I asked whether he was authorized and she was placed aboard and he said he was a company executive?

The Court: That is right so far as transportation is concerned, but if there is any testimony that the company agreed to pay their hotel bills in Juneau I have overlooked it. Maybe it is in the testimony but I don't recall. Therefore, I sustained the objection at this time.

Mr. Nesbett: I will ask you, Mr. Oszman, were you promised reimbursement by the company?

A. I was promised by the president of Alaska Airlines and it is accepted policy of all airlines to do that while an employee and his family are away from home base, or give them a minimum of six weeks to find permanent lodging. Covers their expenses while in transit.

Mr. Kay: I object, your Honor, and ask that it be stricken as not responsive.

(Testimony of Arthur Oszman.)

The Court: That part of the answer which refers to some custom of other companies may be stricken. The question was: What was the contract between the plaintiff and defendant in this case. The jury will disregard so much of the answer as has to do with custom. You may proceed, Mr. Nesbett.

Mr. Nesbett: Who was president of Alaska Airlines at that time, Mr. Oszman? [47]

A. Marshall Hoppin.

Q. Is it your testimony that he promised reimbursement for expenses incurred in this trip?

A. He did of that nature, specifically.

Mr. Nesbett: We offer the bill in evidence, your Honor.

The Court: Is there objection?

Mr. Kay: Yes, I object to the admission.

The Court: The objection is overruled. It may be admitted and marked Plaintiff's Exhibit No. 8. It may be read to the jury.

(Plaintiff's Exhibit No. 8 admitted in evidence.)

The Court: Counsel may proceed when he is ready.

(Mr. Nesbett read Plaintiff's Exhibit No. 8 to the jury.)

Mr. Nesbett: Mr. Oszman, did you pay that bill?

A. I paid it week by week—

Mr. Kay: Your Honor, I would like to renew my objection to this statement. It is dated 11/2/1947, which is about six or eight months after this witness

(Testimony of Arthur Oszman.)

has testified he terminated his employment. It covers a period—

Mr. Nesbett: If your Honor please, we have gone over this step by step.

The Court: Wait now—are you through, Mr. Kay?

Mr. Kay: That is all.

The Court: Very well, I will hear from Mr. Nesbett. I thought Mr. Kay was not through.

Mr. Nesbett: Your Honor, we have gone over this step by step and shown by his testimony he was re-employed.

The Court: Well, the motion is denied, if it is a motion, and the objection is overruled, if it is an objection.

Counsel may proceed.

Mr. Nesbett: I am sorry, your Honor, I didn't hear all you said.

The Court: If Mr. Kay made an objection to it, it is overruled, and if he made a motion to strike it is denied, and he will have an exception as of course.

Mr. Nesbett: Mr. Oszman, did you pay the amount set up in that bill yourself?

A. We paid them week by week to that total during my stay in Juneau.

Q. Did you demand reimbursement of that amount from the company? A. Yes, I have.

Q. To whom were these demands addressed?

A. Mr. Griffin, the treasurer.

Q. Can you identify that document? (Handed to witness.)

A. That is the form used to support the hotel

(Testimony of Arthur Oszman.)

bill in hopes of being reimbursed on it, which always had been company policy. It was merely a form we used commonly in submitting our expenses regardless of the nature of them.

Q. Is that a copy?

A. It is merely a copy, yes.

Q. To whom was the original directed?

A. Mr. Griffin.

Q. Who is Mr. Griffin?

A. The treasurer of Alaska Airlines.

Q. Was that bill prepared under your supervision? A. It was.

Q. Was it handled with the regular office routine with respect to mail, do you know?

A. Using the regular procedure.

Mr. Nesbett: We offer it in evidence, your Honor.

The Court: It may be shown to counsel for the defendant.

(Mr. Nesbett handed document to Mr. Kay.)

Mr. Kay: Did you dictate this yourself, Mr. Oszman?

The Witness: I did.

Mr. Kay: Did you see it after it had been prepared?

The Witness: Yes.

Mr. Kay: And typed?

The Witness: Yes. [49]

Mr. Kay: Do you know of your own knowledge whether or not it was ever mailed?

The Witness: It was set up in the envelope in

(Testimony of Arthur Oszman.)

the regular manner and set in the outgoing mail basket—

Mr. Kay: Pardon me, are you through?

The Witness: Yes.

Mr. Kay: Did your claim for reimbursement for yourself and your wife at the Gastineau Hotel—was that ever made in any other manner than on this statement?

The Witness: I am certain they were.

Mr. Kay: Huh?

The Witness: I am certain they were on a regular form.

Mr. Kay: Isn't this a regular form?

The Witness: No, that is merely the available paper which was in that office as file memos—personal file memos.

Mr. Kay: I object to the introduction of the instrument as being a self-serving instrument prepared as a personal instrument.

The Court: Objection is overruled. It may be admitted and marked Plaintiff's Exhibit 9 and may be read to the jury.

(Plaintiff's Exhibit 9 admitted in evidence.)

The Court: It is admitted as tending to show, if it does, the demand made by the witness for the amount and to illustrate his testimony as to this particular item.

Counsel may proceed. If there is any extraneous writing on the paper it should be removed or stricken out.

Mr. Nesbett: There is none, your Honor.

(Testimony of Arthur Oszman.)

(Mr. Nesbett then read Plaintiff's Exhibit No. 9 to the jury.)

Mr. Nesbett: Can you identify this paper, Mr. Oszman? (Holding paper to the witness.)

A. Yes, this is a wire from the assistant to the general traffic manager [50] in Anchorage.

Q. To whom is it addressed?

A. Addressed to me in Juneau, Alaska—to: "Art Oszman, Alaska Airlines, Juneau, Alaska."

Q. What is the date?

A. October 15, 1945, was the day—the termination date of the certified extension of the certified route to Juneau.

Q. What is the signature?

A. W. R. Lynn, Alaska Airlines.

Q. Is this the original?

A. That is the original.

Mr. Nesbett: We offer it in evidence, your Honor.

The Court: It may be shown to counsel for the defendant.

(Mr. Nesbett handed paper to Mr. Kay.)

Mr. Kay: Mr. Oszman, there seems to be some handwriting on this telegram. Do you know whose that is? (Handed paper back to the witness.)

The Witness: That, I believe, is mine. We used—generally these sat on our desks and we would often take notes across a wire.

Mr. Kay: Do you know when that particular note was made on it?

The Witness: I have no idea of the date.

(Testimony of Arthur Oszman.)

Mr. Kay: But you believe it is your handwriting?

The Witness: I am certain of it.

Mr. Kay: Well, your Honor, I have no objection to the telegram, itself, but I object to the extraneous and self-serving remark which is made in the handwriting on the telegram. (Paper was handed to the Court.)

The Court: It may be admitted and the writing in pen may be covered over by the Clerk so as not to be visible to the jury and will not be read to the jury.

(Plaintiff's Exhibit No. 11 admitted in evidence.)

The Court: Otherwise, the body of the telegram may be read to the jury, and it may be marked Plaintiff's Exhibit No. 11. What is the date of the telegram? [51]

The Clerk: October 24, 1946.

The Court: Thanks. It may be read to the jury.

(Mr. Nesbett read Plaintiff's Exhibit No. 11 to the jury.)

Mr. Nesbett: I will ask you whether or not you went to Seattle in accordance with those instructions, Mr. Oszman?

A. Yes, on the first available southbound aircraft after receiving the wire.

Q. And was that an Alaska Airlines plane?

A. I am quite sure I was able to catch one of their freighters on that date.

Q. I will ask you whether or not you met Mr.

(Testimony of Arthur Oszman.)

Edwards in Seattle in accordance with the plan outlined in that telegram?

A. No, he failed to arrive and I was in constant touch with the Seattle office and actually spent hours in the office each day, and yet we could not get any further word as to when he may arrive in Seattle or whether he had any reason to come to Seattle. I was in the dark for four or five days, not knowing which way to turn.

Q. Did Mr. Edwards arrive?

A. Yes, about the 29th, I believe, of—

Q. I will ask you whether or not you left Seattle in response to instructions from Mr. Edwards?

A. After Mr. Edwards arrived in Seattle he instructed me to take the first available east bound aircraft to Minneapolis and St. Paul and, possibly, into Chicago and New York. Those plans were tentative at the time I left Seattle. However, I boarded a Northwest plane and surveyed the Twin Cities area as per his instructions—

Q. Surveyed which area?

A. Which I received—I received his instructions at the Olympic Hotel on approximately the 28th or 29th of October.

Q. Mr. Oszman, was Mr. Edwards, as general traffic manager, your superior? [52]

A. He was, yes, and my immediate superior, and at the time in Seattle I had asked him for advance expenses to conduct this survey, he agreed that he would advise the then regional traffic manager in Seattle, Mr. Brockus, to have it available for me prior to my departure on Northwest.

(Testimony of Arthur Oszman.)

Q. What was the amount?

A. \$150 he was going to see that was available. However, the next check with the office Mr. Brockus had not been authorized by Mr. Edwards. Therefore, I cashed a personal check in the office and continued on to Minneapolis, and better than a week later, or ten days later, in Minneapolis I again brought this subject up to Mr. Edwards and he was quite furious and attempted to call long distance to Seattle for the advance expenses.

Q. Did he make such a call?

A. He was unable to because of the congested time of the evening he attempted to place it, so he wired to send Art Oszman \$150 to the Raddison Hotel in Minneapolis. However, in error, apparently, the Seattle office had listed cash outlay as a salary advance and it was deducted off of my next check plus the cost of the wire of the money order sending it to Minneapolis from Seattle; and on frequent occasions—or one occasion with Mr. Edwards in the Washington Athletic Club I brought it up to him and he said he would be glad to discuss them with me at a later date, that he would be coming back from New York at a later date. There were many of those problems he would take up. But I did in letter form request payment of this from Mr. Griffin, as I believed it was in error that they had deducted it from my payroll when it was used as an expense allowance for travel purposes only to conduct the survey for Alaska Airlines in the Midwest area.

Q. Can you state whether or not Mr. Edwards

(Testimony of Arthur Oszman.)

authorized you to incur those expenses and charge them to Alaska Airlines for that purpose?

A. He definitely did.

Q. Was it your testimony that the \$150 advance plus the \$9.00 cost of transmitting the money by wire was deducted from your next pay check? [53]

A. The very next check it was deducted and I was never able to convince Mr. Griffin that it was an error. He just failed to give me any consideration, and as a result on March 13, after many requests, I wrote the letter which was submitted of that date covering a number of other things.

Q. Did you demand reimbursement of \$159.50?

A. By wire. Naturally, I was—I thought it was—I didn't think it was an ethical sort of procedure to use on someone they had constantly traveling for months on their own expenses and I thought it was most inconsiderate of them and merely wanted them to balance it out.

Q. Mr. Oszman, can you state whether or not you were reimbursed for other expenses incurred during this survey trip by Alaska Airlines?

A. Yes, I submitted a great number of them in the Seattle office, as it was the custom there for the men to submit expenses and it was paid out of the division office drawer in Seattle. So, knowing that, I thought it would be a good opportunity to catch up on a bit of mine that were in arrears at the time. So I submitted those available, which were far from being complete.

Q. Were those expenses incurred on the survey trip? A. Yes.

(Testimony of Arthur Oszman.)

Q. Were they paid?

A. Yes, those I submitted, but they were not submitted in full.

Q. Did you submit this request for reimbursement for the money deducted from your salary check?

A. Oh yes, I asked for that immediately, but Mr. Griffin ignored it, other than sending a burning letter denying it, although I don't know how they figured I would go to Minneapolis on a trip when I was based on some other—

Q. What was your salary?

A. \$400.00 a month plus expenses.

Q. Mr. Oszman, can you identify this paper?

(Handed paper to the witness.)

A. This is a copy of a wire which the general traffic manager, Ben B. Edwards, had sent to the divisional manager in Seattle, Mr. Brockus, in the Joshua Green [54] Building in Seattle, Washington, to forward the \$150 expense money.

Q. To whom? A. To me—Art Oszman.

Q. Is this the original?

A. That is the original. I never during any of my—

Q. Is this the original?

A. No, that is merely a copy.

Mr. Nesbett: We offer this for identification, your Honor.

The Court: It may be shown to counsel for the defendant.

(Mr. Nesbett handed paper to Mr. Kay.)

(Testimony of Arthur Oszman.)

Mr. Kay: Who prepared this copy, Mr. Oszman?

A. That was taken by the girl in the Seattle office from her records from the Seattle office file, which authorized them to make that payment to me in Minneapolis. I obtained that on my return from Minneapolis.

Mr. Kay: When was this copy prepared?

The Witness: Sometime last fall. I believe it was in December.

Mr. Kay: Last fall? That would be the fall of 1947?

The Witness: '46.

Mr. Kay: When was the copy prepared?

The Witness: That trip was made in '46—in the fall of '46 and the copy was prepared in the fall of '46.

Mr. Kay: This copy was prepared in the fall of '46?

The Witness: From the file of the original wire in our Seattle office. It was merely a memo which I wanted.

Mr. Kay: It is not the best evidence, but we have no objection to it.

The Court: It may be admitted and marked Plaintiff's Exhibit No. 12, and it may be read to the jury.

(Plaintiff's Exhibit No. 12 admitted in evidence.)

The Court: What is the date of the telegram?

The Clerk: There is no date, your Honor. [55]

The Court: No date? All right.

(Testimony of Arthur Oszman.)

(Mr. Nesbett read Plaintiff's Exhibit No. 12 to the jury.)

Mr. Nesbett: Mr. Oszman, can you identify this paper? (Handed paper to the witness.)

A. Yes, this is a copy of a wire which I sent to Mr. Griffin in Anchorage shortly after I returned to Seattle because I was most unhappy by having so many deductions from my payroll check and the failure to reimburse me on expenses.

Q. What is the date on that copy?

A. January 17, 1947.

Q. And who signed it?

A. I signed it—signed as A. J. Oszman, Alaska Airlines, Inc.

Q. To whom was the original directed?

A. To J. E. Griffin, Treasurer, Alaska Airlines, Anchorage, Alaska.

Q. Who prepared that copy?

A. My secretary in the Seattle office.

Mr. Nesbett: We offer this copy of a telegram in evidence, your Honor.

The Court: It may be shown to counsel for the defendant.

(Mr. Nesbett handed to Mr. Kay.)

Mr. Kay: About when was this copy prepared?

The Witness: On the date on the righthand side, which is January 17, I believe.

Mr. Kay: The copy was prepared at the same time?

The Witness: Yes, that is merely a copy from my file.

(Testimony of Arthur Oszman.)

Mr. Kay: Your Honor, I am forced to object to the admission of this on the grounds that it is obviously a self-serving document; contains hearsay information.

The Court: Objection is sustained. It may be marked for identification as Plaintiff's Exhibit No. 13 and may be filed.

Mr. Nesbett: Mr. Oszman, can you identify this paper? (Handed to witness.) [56]

A. Yes, this is correspondence from W. R. Lynn, who is assistant to the general traffic manager. It is addressed to Art Oszman.

Q. What is the date on it?

A. December 26, 1946.

Q. Is that the original letter?

A. That is the original.

Q. To what does the letter refer generally?

A. To the salary and expenses which were in arrears.

Mr. Nesbett: We offer it in evidence, your Honor. (Handed paper to Mr. Kay.)

The Court: Is there objection?

Mr. Kay: No objection.

The Court: It may be admitted and may be marked Plaintiff's Exhibit No. 14 and may be read to the jury.

(Plaintiff's Exhibit No. 14 admitted in evidence.)

The Court: Court will stand in recess until ten minutes past four.

(Testimony of Arthur Oszman.)

(Whereupon, recess was had at four o'clock p.m.)

After Recess

The Court: Without objection the record will show all members of the jury present. Counsel may proceed with examination.

The last exhibit has not been read to the jury, so far as I know.

(Mr. Nesbett read Plaintiff's Exhibit No. 14 to the jury.)

Mr. Nesbett: Mr. Oszman, I will ask you whether or not you held an official position with Alaska Airlines in Seattle, Washington?

A. Yes, as their district traffic manager.

Q. When did you enter upon those duties, if you know?

A. I was assigned to Seattle on December 12.

Q. Of what year? A. 1946.

Q. What was your salary as district traffic manager? [57] A. \$400 a month plus expenses.

Q. And what were your duties as general traffic manager—generally?

A. Those were outlined by the—my immediate superior, the general traffic manager, also the president of the company, Mr. Hoppin: Various projects such as one of the main ones was to contact the cannery industry people in the Seattle area and to create goodwill among those people, such in the course of those things, taking them to dinner, to lunch or in

(Testimony of Arthur Oszman.)

other words, mingle with them socially, as well as establish a good relationship with other carriers in the area which we had reason to cultivate their friendship and their services because we were merely a connecting carrier in that area and needed their help and aid.

Q. Can you state whether any limitation was placed on your expenses as general traffic manager?

A. No. It fluctuated based on the assignment given me by my superior.

Q. Can you identify this sheet? (Handed sheet to witness.)

A. That is an expense account of mine for the period—the February period, 1947, while in the Seattle office.

Q. And who prepared that statement?

A. I did.

Q. Were copies made?

A. There were copies made and sent to the treasury department as was the procedure.

Q. Treasury department of Alaska Airlines, do you mean?

A. To Mr. Griffin—to the treasury department.

Mr. Nesbett: We offer this in evidence, your Honor. (Handed paper to Mr. Kay.)

The Court: It may be shown to counsel for the defendant.

Mr. Kay: Was this—getting this straight—was this submitted to Alaska Airlines or was it later typed by someone?

The Witness: They were typed off of that, from that original, and the original typewritten was sent

(Testimony of Arthur Oszman.)
to the treasury department as in each case each month. [58]

Mr. Kay: You know of your own knowledge that the original typewritten copy of this particular expense account was submitted to Alaska Airlines?

The Witness: The same method was used in mailing it.

Mr. Kay: Do you know of your own knowledge or not it was mailed and received by them?

The Witness: I do.

Mr. Kay: You do?

The Witness: It was placed in the outgoing basket as all other outgoing mail was handled.

Mr. Kay: Well, I object to the document on the grounds it is not the best evidence.

The Court: Objection is overruled. It may be admitted and marked Plaintiff's Exhibit No. 15 and may be read to the jury.

(Plaintiff's Exhibit No. 15 admitted in evidence.)

The Court: Is it your testimony, sir, that all of the items included on that exhibit represented actual bona fide expenditures made by you on the business of the company?

The Witness: They were requested, just those with the names—they requested the individuals whom I should contact and extend those courtesies to.

The Court: Those expenditures were actually made?

The Witness: Yes, sir. Many more that were never listed through a period of time.

(Testimony of Arthur Oszman.)

The Court: It may be read to the jury.

Mr. Nesbett: We waive the reading unless Mr. Kay insists.

Mr. Kay: I think it ought to be read.

(Mr. Nesbett then read Plaintiff's Exhibit No. 15 to the jury.)

Mr. Nesbett: Mr. Oszman, did you submit expense accounts to Alaska Airlines for the month of December, 1946?

A. Yes, as in previous months from October on and they were honored in a spotty manner, but they were honored with the exception of this and March.

Q. Was the expense account for December similar to the one you have before you?

A. Very much so, yes.

Q. Mr. Oszman, did you submit an expense account for the month of January, 1947?

A. I did.

Q. Was that expense account honored?

A. It was.

Q. By whom? A. Mr. Griffin.

Q. And were you reimbursed for expenditures?

A. Yes.

Q. Do you recall the amount of your expenses for that month?

A. I don't—the actual figure—but it was within, I'd say, probably between \$90.00 and a hundred five would be a conservative estimate.

Q. Mr. Oszman, did you demand reimbursement of the expenses set out in that sheet?

(Testimony of Arthur Oszman.)

A. Yes, I had, using the same method as in previous submissions.

Q. Were you ever reimbursed those expenses?

A. No.

Q. Looking at the first item on this expense account marked 2/1/47, marked "Seattle Transit System Tokens, 50c", what would that represent, activity by yourself on behalf of the company?

A. It was routine in my capacity to make daily contacts with various business field and interests in the Seattle area for the purpose of Alaska Airlines development. The tokens were purchased to be used for short rides within the loop district where it was much easier than to use my personal car and put it in an expensive parking lot where your parking is 35 cents regardless of whether it was a few minutes or an hour's time—it was a cheaper method.

Q. Mr. Oszman, were you traveling around town to any extent? A. Six days a week, yes. [60]

Q. The next item on this expense sheet is marked 2/1, "Dinner Chas. Griffith, Geo. Swanson, \$6.23." What would that represent in the way of an activity on the part of Alaska Airlines?

A. They were of a radio corporation in Seattle and they were shippers of ours. I lived 17 miles from town and it was a daily occurrence of mine on my last stop or in the contacts on my tentative work sheet, I would—I made a habit of inviting those people to lunch, or when I was held over in the loop area beyond normal business hours because of a delayed aircraft arrival, I would naturally have dinner down town and it was not only agreeable by the company,

(Testimony of Arthur Oszman.)

but it was suggested, that I use that method by inviting those people whenever I had an occasion to stay down town, which was about a daily occurrence. As I say, I lived 17 miles from home.

Q. The next items is marked "2/3, Dinner, Dan McMorin, \$4.87." What would that represent?

A. He was the Alaska Passenger Representative for Pan American. Because we had very few facilities in the Seattle area I had to more or less crawl around to those people and create a good deal of goodwill to borrow equipment to turn our ships around. It was a long time until we had enough equipment in that area to turn ships around, and the company executives thought it was reasonable to get that for so little money expended.

Q. I have here, "2/3, Lunch, Martin Geary, R. Harrington, \$3.62."

A. They were also Pan American employees and, as I said, when we had our non-scheduled arrivals at the fields those boys worked different shifts and in order to get the cooperation of them on different shifts it was the procedure to cultivate their goodwill in order to borrow their equipment to use for our turn around.

Q. You would buy their lunch, you mean?

A. Little gestures such as that, so were were sincere—

Q. An item marked: "Lunch, F. Dunbar, \$2.19."

A. He was a Northwest Traffic Representative who had an occasion many [61] times to aid us in transfer of shipments, freight, also various other shipments that he could throw towards Alaska Air-

(Testimony of Arthur Oszman.)

lines in the form—which were revenue raising to Alaska Airlines. They were interline arrangements which we worked out with those folks.

Q. Mr. Oszman, were you instructed by your superior to incur expenses of this nature on behalf of Alaska Airlines?

A. They encouraged that sort of thing, but being a married man I held it down to a minimum as I thought, because I do enjoy family life.

Q. I have marked: "2/17, Lunch, Ross R. Knight, \$1.82."

A. He was a flight superintendent of Northwest and we did not have a certified flight superintendent in Seattle and I had worked with him for years with Northwest and I had wanted some very important questions answered by him in relation to our ship turnaround, and weather problems which we too experienced on the coastal run which we discussed during the luncheon meeting.

Q. An item marked, "2/23 Sunday, From residence to Olympic, 32 at 5 for conference with MCH, \$1.60." What would that indicate?

A. As I said, I lived 17 miles away from our office. We were not a scheduled carrier. We were to maintain office hours eight to five. I was responsible for the entire turning around of equipment there, as my title indicates. It was necessary for it was requested by Mr. Hoppin that I install a telephone at Renton, Washington, at my home to protect the company's interest because of an unscheduled arrival time in that area. The mileage marked down there was on a Sunday evening, supposedly days off

(Testimony of Arthur Oszman.)

which we seldom got and nobody was compensated for—I never got compensated for this time over 40 and never requested it, but voluntarily gave it because I thought I was doing the right thing. The mileage there was to cover the use of my personal car from Renton, Washington, to the Olympic Hotel on a Sunday evening at the request of Mr. Hoppin, who was president of Alaska Airlines, for a so-called urgent meeting on a Sunday evening.

Q. Item marked: "w/1 thru 2/28, Parking ramp, \$12.36." [62]

A. We were instructed by the officers of the company to use a parking ramp, or a parking lot, to be obtained by the month, if we possibly could—which ever would be the cheaper rate—and it would be authorized and absorbed on our expense account as the cars were our own cars, we used them for company business and were compensated on the basis of 5 cents a mile plus parking meter plus parking ramp expenses while in use of the company, which was constant use, as you can see, even on a Sunday evening—it was required the director of the company to drive 17 miles one-way—

Q. An item marked: "1/11 thru 2/11, The Pacific Telephone and Telegraph Co., \$15.21." What would that represent?

A. Those were because Renton was an incorporated city, yet only 17 miles from Seattle, there was a 10 cents toll charge on each call, and as Mr. Hoppin insisted that I protect the company's interest and obtain a telephone at the Renton address to be used as company business and to be put on my expense

(Testimony of Arthur Oszman.)

account rather than hire an employee based at the field by the month, he said it would be much cheaper by me getting a telephone and protecting the company's interests from home. Yet he failed to honor any of those; he refused to honor those after I had it installed and had made those commitments. He was not consistent in his policy as were previous officials.

Q. Will you identify that paper? (Handing another paper to the witness.)

A. This is a copy of the March expenses incurred by the district traffic manager.

Q. Is that a copy?

A. That's my copy that I would always write up day by day, or keep notes until I got to the close of the month where then I merely dictated these to the secretary.

Q. To whom was that sent?

A. Sent to Mr. Griffin, the secretary of Alaska Airlines in Anchorage, Alaska.

Q. Was it handled in the usual office manner with respect to mailing?

A. In the usual manner in the outgoing mail basket. [63]

Mr. Nesbett: We offer this in evidence, your Honor. (Handed document to Mr. Kay.)

The Court: It may be shown to counsel for the defendant.

Mr. Kay: This again is a hand written copy, Mr. Oszman. It is your testimony that the original and copies were typed from this?

A. Yes, the original was typed from that.

(Testimony of Arthur Oszman.)

Q. (By Mr. Kay): You say the original?

The Witness: I saw it.

Mr. Kay: And it is the same in every respect as this?

The Witness: It is the same.

Mr. Kay: Except that it is typewritten?

(Witness nodded.)

Mr. Kay: I object to the document as not the best evidence.

The Court: Objection is overruled. It may be admitted and marked Plaintiff's Exhibit No. 16 and it may be read to the jury.

(Plaintiff's Exhibit No. 16 admitted in evidence.)

(Mr. Nesbett read Plaintiff's Exhibit No. 16 to the jury.)

Mr. Nesbett: Mr. Oszman, an item marked "3/10, J. Garrison, \$2.19"—What would that represent in the way of effort on behalf of the company, if you know?

A. Garrison was connected with the express agency there and often was in the position to offer Alaska Airlines air freight which had not been previously designated from the origin and we were able to pick up substantial amount of revenue from sources such as individuals who controlled it as he did.

Q. Were you instructed by your superior to cultivate those types of persons?

A. Yes, very much so.

(Testimony of Arthur Oszman.)

Q. Were you authorized by your superior to purchase meals for them?

A. Yes, they encourage it, and while they were in Seattle with me they would duplicate that same sort of procedure and I accompanied them. It is a [64] common practice in the industry.

Q. Mr. Oszman, this expense account for the month of March is marked: "Total, \$106.88." Did you submit that statement and make demand for reimbursement?

A. Yes, using the regular method.

Q. And were you ever reimbursed that amount?

A. No.

Q. Did you make a demand for the expenses submitted for the month of February I just questioned you on? A. I did.

Q. Were you reimbursed for the expenses for that month? A. No.

Mr. Nesbett: No further questions, your Honor.

The Court: Counsel for the defendant may examine.

Mr. Kay: Does your Honor wish to continue with the cross-examination of the witness at this time? Are you going past five, or not?

The Court: No, we will stop at 5. It is now 23 minutes of 5.

Mr. Kay: Mr. Nesbett has just suggested he has an appointment at 4:30 and I would suggest it might make for better continuity of the cross-examination if we suspended until tomorrow morning.

Mr. Nesbett: I didn't mean 4:30, your Honor. I meant I have an important engagement at five, and if Mr. Kay wants to suspend I am quite agreeable.

(Testimony of Arthur Oszman.)

The Court: My principal anxiety in connection with this case is to finish it tomorrow.

Mr. Kay: I am sure that we can do that.

Mr. Nesbett: It seems almost certain we will be able to, your Honor. My only witness is Mr. Oszman.

Mr. Kay: So far as I know, my only witness is Mr. Griffin.

The Court: We will have to suspend, I think, in the morning for the call of the calendar. However, we will try to take care of it. The trial will be [65] continued until 10:30 tomorrow. Please report at 10:30 tomorrow, ladies and gentlemen. Some other matters are to come before the Court at 10:00, but we will try to be ready to continue the trial at 10:30.

(The Court then duly admonished the trial jurors about discussion of the case, and the trial was suspended at approximately 4:35 o'clock.)

(Trial of the cause was resumed at 10:30 o'clock a.m. of Friday, May 28, 1948:)

The Court: Roll of the jury may be called.

(Jurors in the box were all present.)

The Court: The plaintiff may resume the witness stand.

(Plaintiff resumed the stand.)

The Court: Is there any further direct examination?

Mr. Nesbett: No further questions.

The Court: Counsel for the defendant may examine.

Mr. Kay: Could I see the exhibits, please?

(Testimony of Arthur Oszman.)

Cross-Examination

By Mr. Kay:

Q. Mr. Oszman, when you were testifying yesterday how long did you state that you had lived in Alaska? A. Approximately five years.

Q. And when did you state that you were employed by Mr. Pollack?

A. The agreement was made the latter part of April in 1944, I believe.

Q. And were you living in Alaska at that time?

A. I was.

Q. Your family up here, Mr. Oszman?

A. Due to the war regulations families were not permitted in the Fairbanks area—

Q. Was your family in the Territory?

A. —was the only reason for their not being here.

Q. Were they in the Territory at that time?

A. No, sir. [66]

Q. They were not? Now, when, if you recall, Mr. Oszman, did you go to work for Alaska Airlines?

A. I was hired during our discussion the latter part of April, but it was necessary to terminate at Northwest's general office in Minneapolis, Minnesota, and it was agreed that, as I said before, the fare was to be covered after that period of employment.

Q. You were working for Northwest Airlines in the Territory at that time?

A. Leased out to the Alaska Wing of the Air Transport Command.

(Testimony of Arthur Oszman.)

Q. But you were employed by Northwest Airlines, leased out— A. To the Army.

Q. The Army? Now, you state that Mr. Pollack promised you reimbursement for your transportation? A. He did.

Q. Will you state what that conversation between you and Mr. Pollack was, Mr. Oszman—just what he said to you and what you said to him?

A. He merely said that employees, that he urgently needed in those skilled classifications, were covered in that respect if they were—if they proved themselves and had the ability to continue in the employ of the company continuously for a six-month period.

Q. Now, at the time you were employed—this conversation took place in Fairbanks, Alaska, is that right? A. It did.

Q. You were not, then, in Minneapolis, Minnesota, were you? A. No.

Q. And after you were employed you then went to Minneapolis, is that correct?

A. That is right.

Q. You went to Minneapolis and you returned to Fairbanks, is that correct?

A. It was understood with Mr. Pollack it would first be necessary for me to terminate, although I had gone through the preliminary at the Fairbanks [67] Station and had wired in my resignation, in order to start any duties with Alaska Airlines, and the assignment was to be in Juneau, Alaska.

Q. Now, this statement that you have presented

(Testimony of Arthur Oszman.)

here as Plaintiff's Exhibit 1, will you state whether or not that covers your transportation from Fairbanks to Minneapolis or from Minneapolis to Fairbanks?

A. That covers my transportation from Minneapolis Airport—it was purchased in the St. Paul ticket office of Northwest Airlines—

The Court: Will you speak a bit louder?

The Witness: It was purchased in the St. Paul office of Northwest Airlines. However, they have a Twin Cities Airport there, and the origin was old Chamberlain Field, Minneapolis. The destination on the ticket read Fairbanks, Alaska.

Mr. Kay: That doesn't cover your transportation from Fairbanks to Minneapolis, then?

A. No, sir. I was taken to Minneapolis aboard our regular aircraft—Army Air Transport—as a crew member.

Q. Now, as an employee of Alaska Airlines subsequent to May, 1944, Mr. Oszman, do you know of your own knowledge at what time Alaska Airlines established the policy of paying transportation for employees hired Outside?

A. I believe it was a common practice, often—

Q. Do you know when, I asked, they established that policy?

A. Apparently at that time it was in effect because I was putting employees aboard the aircraft at Juneau on that basis, covering their rooms at the Baranof Hotel, many times out of my pocket. I paid—

(Testimony of Arthur Oszman.)

Q. Do you know of your own knowledge any statement of company policy being issued subsequent to that time?

A. That is the only proof I have other than the actual handling of personnel coming up on that basis.

Q. Yesterday you mentioned, Mr. Krug, I believe, and you were unable to recall any other individual? [68]

A. Other than by name, but if Mr. Griffin would be good enough to supply the manifest during that early period I could supply the names and who were supplied in that respect. They should have those records. It is not for me to retain—

Q. Well, isn't it a matter of fact and knowledge to you that policy was not established until 1945, and not—

A. Few things were ever written on the company policy. The organization was young, it was growing, it was subject to growing pains as the industry has been for 20 years' time. Naturally, all things could not be written. In most cases we were, if we had sufficient knowledge of the industry, permitted to use our judgment and we were supported by the officers of the company.

Q. I asked you, isn't it a fact that policy was not established until 1945?

A. It may not have been written, although it had been verbally effective in many cases. I handled them through that Juneau terminal.

Q. I asked you whether or not you didn't know

(Testimony of Arthur Oszman.)

that the policy was established, either verbally or written, in 1945?

A. I assumed it was effective because of handling people on the same arrangement—same basis.

Q. Now, when is the first time, Mr. Oszman, that you demanded the payment of this \$219.30 from Alaska Airlines?

A. As I said, there were so many changes of the officers of the company, not only treasurers but entire organizational changes from the President on down—

Q. I asked when was the first time?

A. When Mr. Cuddy, who was then President of Alaska Airlines, came through Juneau in the capacity of an Alaska—

Q. Who?

A. Mr. Cuddy. I believe you know—

Q. Yes, I know him very well. Now, when was that, if you recall?

A. It was about—an estimate would be midsummer of '44. [69]

Q. Midsummer of '44? About what month?

A. It could have been between June and August—may have been as late as September.

Q. As late as September of 1944? A. Yes.

Q. And what did you say to Mr. Cuddy and what did he say to you?

A. Well, he was naturally, because of his capacity in the company, most vitally interested in progress. We sat in the Baranof Hotel in the office, which was to the left of the lobby, discussed a num-

(Testimony of Arthur Oszman.)

ber of things. He seemed quite elated over some of the progress, and then again with situations on unpaid bills in the area he thought it was a deplorable condition and mentioned to me—

The Court: Can the jurors hear the witness?

Jurors: Yes.

The Court: Very well, you may go ahead. I suggest you speak a bit louder; I would like to hear too.

The Witness: And I told him it was very difficult for me to continue on a basis on which I had previously operated similar offices for Northwest Airlines, lacking not only facilities but available cash to complete commitments which were thrown at me from officers throughout the organization, and, as I said, he thought it was a deplorable situation, made notes of it, but then said he was only on an inactive status and would be happy to pass on the information to someone who was in an active capacity. And I believe he continued Outside on a vacation.

Q. Did you at that time bring to his attention the claim for \$219.30 for transportation from Minneapolis—

A. Very much so. I mentioned the fact and pointed out to him very clearly we did not have so much as an office desk. I pleaded for files in which to keep valuable as well as incidental papers—

Q. I asked about this transportation from Minneapolis: Will you state whether or not you asked him at that time for a check for \$219.30? [70]

A. Not that—it was not due at that time. It was

(Testimony of Arthur Oszman.)

not due until after I had been employed for six months.

Q. I know—you didn't make demand?

A. It was other amounts I was in arrears.

Q. I am talking about there—

A. Not for the fare. It was not due.

Q. All right, when was the first time you made demand for payment of this fare?

A. At the end of the six months' period.

Q. What is the date on this instrument, Mr. Oszman? (Handed instrument to witness.)

A. Well, that is the date that I originated my employment in the Juneau Station.

Q. May, 1944?

A. That is May 4, the starting date as they would indicate on my payroll, I believe—

Q. Well, what is this date?

A. That is the month of travel.

Q. When was this—is there any indication on this at all as to when this bill was presented, or is this a bill—a statement—you presented to Alaska Airlines—

A. That is a copy. No, they had a passenger receipt. Anyone purchasing a ticket has a passenger receipt which is retained. That is submitted to the Treasury Department.

Q. What is that?

A. That is a copy of the total expenditures—my copy.

Q. A copy of what? I am sorry, I just don't understand what that is a copy of.

(Testimony of Arthur Oszman.)

A. That indicates the serial number of the ticket, the point of origin, the destination of the transportation used by Arthur J. Oszman in order to take up employment with Alaska Airlines, as was previously arranged and agreed to by Mr. Pollack. [71]

Q. What is that, now? Is that a thing which was sent to the company?

A. No, the passenger receipt was sent to the company.

Q. You mean a portion of the ticket?

A. Yes. There is always a portion retained.

Q. I know; was it sent to the company with that attached? A. No.

Q. It was just sent?

A. It may have been with a copy similar to this.

Q. Well, do you know what that is a copy of?

A. It's merely a record. I couldn't very well draw a picture of the transportation receipt. This merely identifies my outlay of cash.

Q. When was that instrument made—the instrument made of which that is a copy?

A. That was probably—this one here was taken from the original, naturally, and from other personal files and it was made up at a much later date.

Q. Do you know when it was made?

A. It might have been made as late as a year ago or a year and a half ago. I frequently changed those things, revised the files, consolidated them—

Q. Well, do you have any idea when the original of that instrument was made?

(Testimony of Arthur Oszman.)

A. The original ticket was purchased on that date.

Q. No, not the original ticket—the original of that document of which that is a copy?

A. I would say on this form, possibly, for approximately November to — through, probably, March of '46 or—

Q. It could have been between November and March? A. It could have been.

Q. Didn't you testify yesterday you observed that being made and dictated that and watched it being typed? [72]

A. I said this was merely a copy.

Q. But didn't you say you watched that, how it was made and typed and watched it put in the mail?

A. You are attempting to confuse. You asked me what the purpose of this ticket was. It is merely as a record of transportation used. I could not request payment unless I submitted the passenger's receipt. This is not of any true value; it is merely for my personal records. The importance I don't think is as to the date that is on here. There is no specific date, but there are specific serial numbers which can trace the origin, the purchase and use to destination.

Q. The point I am getting at—I am not trying to confuse you—I recall you testified yesterday you watched that very document of which that is a carbon copy—dictated to your stenographer in Juneau, and that you watched it being put in the mail and you knew of your own knowledge it was mailed. We went over that very carefully, as I remember. Now,

(Testimony of Arthur Oszman.)

you say it could have been any time between November and March—

A. Yes, because I was traveling very frequently from October in 1946 until I was finally assigned to Seattle, to December 12, 1946.

Q. But although you can't remember within three or four months of when that was made, you are sure—you are now testifying as you did yesterday, that you watched it being typed?

A. I did watch it typed, yes. It was in one of those two offices.

Q. But you can't remember when?

A. I think it would be difficult for most people to pin down any one date. It was in one of those two offices.

Q. But you don't know when?

A. During those periods of time, as I said, I was traveling quite frequently—

Q. Yesterday you said it was in Juneau.

A. It could have been. [73]

Mr. Nesbett: Your Honor, I object to that statement that the witness—

The Court: The objection is sustained. You can ask him whether he said Juneau yesterday.

Mr. Kay: Didn't you say yesterday that was typed in your Juneau office?

A. As I said, numerous requests had been made for this type of expenditures. I merely said this was a copy. I had made as high as five and six requests for these expenditures. They have been made all the

(Testimony of Arthur Oszman.)

way from Juneau, Seattle, Kodiak, Anchorage—personally, written—

Q. Do you know when the original of that document was typed, Mr. Oszman?

A. This is merely a copy of an original. Since then there have been four or five originals sent to the Treasury Department.

Q. Do you know when the original of which that is a copy was made?

A. The date isn't clear, but I would say it would be approximately those dates.

Q. Do you know where it was made?

A. Either the Juneau office or Seattle office. I would say the Seattle office on this copy because of—we had a boat strike; there were many things I couldn't get off the dock. As you recall we went for a lengthy period and due to those transfers there was no other method of transportation between Juneau and Seattle. I had many records left in storage, unable to get off the dock in Juneau. Therefore, I was not able to submit some expenses which the Mrs. had put in with other things that we would not need in a hurry and, therefore, were stymied until after the boats began operating the first of the year. When I again compiled these things and attempted to gather them and consolidate them, a great deal was done in the Seattle office, but records of mine were set to go by Mrs. Oszman in the Juneau office during the period I was traveling, and when we knew our transfer was to be effected—and in fact, as I said, she was placed aboard a Pan American

(Testimony of Arthur Oszman.)

Airplane between Juneau and Seattle and her fare was paid by Alaska Air at that time—she failed to carry my records I wanted. As a result they were left until the first boat operated. [74]

Q. I am not sure I followed all of that.

A. Her fare was paid from Juneau to Seattle—she was not an employee—at that time.

Q. All I want to know is if you know when and where this was executed?

A. I believe in the Seattle office.

Q. You believe in the Seattle office? Between what months?

A. It would have to be, I say, either the Seattle or Juneau office; I say it would have been between October and December or January.

Q. This was not executed on the date up here in the right hand corner?

A. I am quite certain that was the date they placed me on the payroll. They were late in placing me on the payroll. That could be the starting date in '44. That date on the left is merely the month of travel. It has nothing to do with the text below it. That is merely a record of my travel and serial number. If in the future I desire to check further to support my claim I could obtain that from the Treasury Department of Northwest Airlines.

Mr. Kay: Thank you, Mr. Oszman. Your Honor, at this time I renew my objection to this document on the ground it is insufficiently identified.

The Court: Motion is denied.

Mr. Kay: Now, you state that this instrument

(Testimony of Arthur Oszman.)

was in your estimation prepared sometime between October of '46 and sometime after that, either at Juneau or Seattle?

A. That one, yes, but I say that is not the first record I had of it.

Q. Well, at that time when it was executed was the original of which this is a carbon copy mailed to Alaska Airlines?

A. Could you repeat the question, please?

Q. Yes. At the time this copy was made, I take it that there was an original over it with carbon paper between; right? A. Yes.

Q. Now, was the original at that time sent to Alaska Airlines?

A. No, it was withheld until other expenses were compiled. As I said, [75] the boat strike affected me gathering those things and having them in one location.

Q. Well, this was not sent to Alaska in October or November?

A. As I recall, there was a group of those sent. As I was able to gather them I submitted them.

Q. Well, if that was sent to Alaska Airlines in October or November of 1946, would that constitute the first time you asked for payment of that claim?

A. No, because I had taken that from other records. That is merely a copy of—taken from the original.

Q. When was the first date, if you can recall, Mr. Oszman, on which you requested Alaska Air-

(Testimony of Arthur Oszman.)

lines to pay you \$219.30 for your transportation from Minneapolis?

A. Was in November of '44.

Q. November of 1944? Now, how did you make that request for payment, Mr. Oszman?

A. We had another set of new officials from the General Manager on down to Vice President, Operations Manager and Treasurer, and as they came through Juneau, naturally, they were interested in their new assignment and it was a request that I made. They said: "Would you please again submit your claim."

Q. Again submit? Had you previously submitted it?

A. Well, because I had had other amounts in arrears, you see. That is not the only claim, Mr.—

Q. I am just talking about this one now, Mr. Oszman. We will get to the others later.

A. That alone, that was the first time.

Q. That was in November, 1944?

A. November, yes.

Q. To whom was the first man you spoke about this \$219.30?

A. I am certain that was Odenwalder.

Q. Odenwalder? A. Odenwalder. [76]

Q. What was his capacity with the company?

A. He was for a time Treasurer and also a traveling secretary for the President at that time, T. N. Law. After he left the active treasury office he still retained a private secretary capacity to T. N. Law, as I recall—he claimed he did.

(Testimony of Arthur Oszman.)

Q. All right, now, where did you make that claim of Mr. Odenwalder? A. In Juneau.

Q. What did you say to him and what did he say to you?

A. He didn't deny it. He said that during his short period of stay in Anchorage that he could readily see how they could be fouled up because there were never permanent records—

Q. What do you mean, fouled up?

A. Because the records in the Treasury Department, there was no set procedure in accounting.

Q. Had you previously made claim?

A. Not on that—not on the fare.

Q. That is what I am talking about. I am talking about the—

A. On previous amounts they were in arrears.

Q. Did you ask Mr. Odenwalder for this fare, \$219.30?

A. I mentioned that would soon be due, because so much other had been so much in arrears, I merely added that because it soon would be due.

Q. Now, at that time you were submitting from time to time expense sheets, were you not?

A. There were two times. Well, there are various times. It all depends on the Treasurer or his assistant or an officer of the company all seemed to have authority to do unlimited things, and being my superiors, naturally, I was forced to follow their directive. They had petty cash payouts, they had—and as they instructed me in the case of beer and whiskey and many items, I should not run them all

(Testimony of Arthur Oszman.)

through on petty cash; they should be broken up so they would appear better on the records. They had numerous instructions which I didn't question. [77]

Q. Did you testify yesterday that you were submitting expense accounts of some kind at the end of each month? A. Yes.

Q. All right. Now, when you go down to November of 1944 did you then include, or begin to include, your \$219.30 on your expense accounts?

A. After the period of time—after the six-month period I did submit the first request for payment.

Q. Did you submit it on these expense accounts?

A. Not on that type of an expense account. Those forms have changed, as I say, frequently, as well—

Q. I will show you Plaintiff's Exhibit 3 and ask you if anywhere on this recap of expenses you claim from Alaska Airlines during the Juneau period—if the item of \$219.30 appears?

A. That is a different type, as I say.

Q. Is it included on that, is all that I ask, Mr. Oszman? A. No, it is not.

Q. Thank you. Now, you say that the first time you discussed this \$219.30 was with Mr. Odenwalder? A. Yes.

Q. In Juneau? And, Mr. Oszman, you stated, I believe, that Mr. Odenwalder didn't deny it?

A. That is right.

Q. Now, when was the next occasion? Did you receive payment of it then thereafter?

A. No, he said things were in such a mess and then they had a fire in the Treasury Department—I

(Testimony of Arthur Oszman.)

don't know just what it was, but for a long time they had asked me in Juneau to contact my contacts which were in arrears—not—my personal one was very small compared to numerous ones around town—and asked me to contact those folks and have them submit their claims because their records were destroyed. I was forced to use that procedure on two different occasions.

Q. When was the next occasion after Mr. Odenwalder's conversation that you asked for payment of this claim? [78]

A. On a trip to Anchorage; I was requested to come to Anchorage by Colonel Castner, who was then General Manager, as I said, within a short time—matters of weeks—sometime—six, seven weeks, they change entire heads of the top of the organization.

Q. Well, did you discuss this \$219.30 with Colonel Castner?

A. Yes, I did. I was directed to come to Anchorage to take over the General Traffic Manager's job. I declined for obvious reasons.

Q. What date was that, Mr. Oszman?

A. I am certain I was brought up here about the 20th or 21st of December in 1944.

Q. 21st of December, 1944?

A. Yes, because I recall that they failed to have equipment, that was flyable, on my return and Colonel Castner guaranteed I could be home for Christmas. It so happened that the only available aircraft, or one that was capable of that route, had

(Testimony of Arthur Oszman.)

run out of engine time and, therefore, he thought that by holding me over the holiday season I would probably like Anchorage and agree to their proposal. However, I refused because I told them I was so much in arrears I didn't think it was an ethical way to handle things and encourage me along other lines. As I said, I am a salesman, yet I can be sold on things. So I told that Colonel, I thanked him and wanted him to give that his attention and I boarded the Pacific Northern plane and charged the fare to Colonel Castner, Alaska Airlines, which he agreed to and had paid, and returned home for Christmas and refused to accept the promotion until those things were righted.

Q. When is the next occasion? Were you thereafter paid for this \$219.30?

A. Could you repeat that question?

Q. Were you paid then at that conversation?

A. No, as I said, financially they had gone through a number of fluctuating situations where their inability to pay was evident, and I was told to sit tight, that there was new money coming into the organization. Naturally, as I [79] said, the air industry had been my life for a long time. I believed that by being conservative that it would make my job more solid, the organization could grow—I was not belligerent—I was happy with the project; they seemed to be sincere.

Q. When was the next occasion upon which you demanded payment of your \$219.30?

A. I have correspondence in the file there where

(Testimony of Arthur Oszman.)

I contacted the Vice President of the organization, Don Goodman, and had gone over the same situation with him.

Q. You claim that you wrote Don Goodman, the Vice-President of the Organization?

A. Yes, and talked to him verbally in Juneau as well.

Q. When was that?

A. I would say from November on through until about March of the following year. That would be early '45.

Q. Well, could you be more specific about when exactly you wrote Mr. Don Goodman?

A. Yes, I have the acknowledgment there of the letter in the file, and which acknowledged and pleaded with me to hold in my capacity—they would do their utmost to right the situation—because they were just taking over those offices of Vice President on through—

Q. When was that?

A. The letter there has the date. It could be January or February of 1945.

Q. And that was in response to a letter you had written?

A. It was a statement outlining the situation—financial, personal—everything.

Q. That was in response to a letter you had written asking for payment of \$219.30?

A. It was included in more or less of a station report. It included many things. That was one of them.

(Testimony of Arthur Oszman.)

Q. Well, now, when was the next occasion on which you demanded payment of [80] the \$219.30?

A. Well, several times I was—I had made trips for Alaska Airlines and because they were that much in arrears they were advancing money to me. In fact, in the month of May, '45, I made a trip to Seattle for them to set up a communications tie-in between the CAA at Everett and the Fourth Avenue office—I believe it was 1402 Fourth Avenue. They advanced my expenses—the entire amount—at that time, plus my fare both ways and, as I said, they were slowly unpiling the mess.

Q. I just asked you when was the next occasion?

A. It was during that month—that month of May.

Q. What month? A. Month of May.

Q. Month of May, 1945? A. '45.

Q. And to whom did you make that request?

A. To then the new President of the company, which was T. N. Law. He came up here.

Q. And you asked Mr. Law? A. Yes.

Q. For this \$219.30?

A. Yes, along with others.

Q. When was that? That was during that month?

A. Well, Mr. Law had made two or three trips to Anchorage from Oklahoma and California; on those trips he said he had just bought into the company and he naturally was interested in the condition of it and had gotten me in the corner and we had gone over all of those things, from obligations of the company in the Juneau area to my personal

(Testimony of Arthur Oszman.)

accounts in arrears, and he too said they would be taken care of and that ample money was flowing into the company and they would be taken care of and not to be impatient, and I believed him because I believe he was the finest President Alaska Airlines ever had. [81]

Q. What date was that?

A. That was in the spring of '45, because he had made two trips to Juneau pleading with me to come to Anchorage to take over the General Traffic Manager's job with an increase in salary and unlimited expenses.

Q. When was the next occasion you asked for payment of this \$219.30?

A. After I received Mr. Law's proposition on a temporary basis I came to Anchorage.

Q. This was in the spring of '46—'45?

A. That would then be a little beyond the spring. It would be May or June—not later than June 15 or 20.

Q. Now, when you came to Anchorage did you then ask for payment of the \$219.30?

A. Yes. Mr. Law, after our meetings—we had them daily at that time, attempting to iron out the rough situation and on several occasions I had been invited by Mr. Law to go into Mr. Hedman's office, who was then Treasurer of the company—a Mr. Hedman, H-e-d-m-a-n—and it was at that time that Mr. Law asked me to submit the copies of the amounts which I was in arrears and, as I said, I left them on Mr. Hedman's desk.

(Testimony of Arthur Oszman.)

Q. That was about what month?

A. In May—not later than June 20 of 1945.

Q. And with these other statements did you submit a statement for \$219.30 at that time?

A. Yes, there was a statement at that time—it was all grouped on his desk with a rubber band around it.

Q. Now, when did you terminate your employment with Alaska Airlines at that time?

A. It wasn't—I would say, then, in an active capacity, it was on June 30, 1945. I have a check there—a payroll stub—which supports that.

Q. June 30, 1945? A. That is right. [82]

Q. Now, when you left the company at that time did you ask again for the payment of this \$219.30?

A. Yes, but they said so long as I would be so close at hand on Kodiak Island, and through my boss representing them on an agency basis, that they would eventually get to it.

Q. Now, let's get that straight. What was your status with Alaska Airlines, that you claim, after June 30, 1948?

A. I managed a business out of the aviation field in Kodiak, with the power of attorney, and this owner had the Alaska Airlines agency. Therefore, I continued on in that capacity as the owner was absent.

Q. In what capacity? A. As an agent.

Q. Were you on the payroll of Alaska Airlines at that time?

(Testimony of Arthur Oszman.)

A. I was on the payroll in this field where—and—

Q. On Alaska Airlines' payroll?

A. No, my boss was—

Q. Who was your boss? A. Ray Martin.

Q. Ray Martin? A. Ray Martin.

Q. What was his business?

A. Liquor business.

Q. Was he employed by Alaska Airlines?

A. Yes, on an agency basis.

Q. I am asking: Was he employed? You differentiate between employment and agency?

A. An agency has a similar—the obligations are the same.

Q. You mean an agent is on the payroll and received a salary? A. He did.

Q. Mr. Martin received a salary from Alaska Airlines? A. He did. [83]

Q. Now, wait a minute—

A. He did.

Mr. Nesbett: Your Honor, I object to his arguing with the witness. He stated he had.

The Court: Overruled.

Mr. Kay: Isn't it a matter of fact he received commissions?

A. At that time he was on a payroll. He still is on a payroll on a flat basis from Pacific Northern on the same basis as Alaska. Following the cancellation of Alaska's certificate on August 15, 1945, he then, through Art Woodley, got him the same con-

(Testimony of Arthur Oszman.)

nection on the same basis with Pacific Northern Airlines at \$250 a month that is not a commission.

Q. What is it, a flat fee?

A. It was a flat fee.

Q. A flat fee? A. It was a salary because—

Q. A salary?

A. It was a salary because withholding taxes were withheld on each check.

Q. Were you employed on this same basis?

I. I was managing and had an option to buy either half or all of this business and had the power of attorney to act in all capacities. Therefore, then I was tied in very closely with Alaska Airlines, wouldn't you say?

Q. No, since you ask me.

The Court: Do not ask counsel questions.

The Witness: I am sorry.

Mr. Kay: Weren't you employed by Mr. Martin, now, during that period? A. Yes.

Q. You were employed by Mr. Martin?

A. Yes.

Q. And Mr. Martin was on an agency basis with Alaska Airlines? A. A salary.

Q. Agency, didn't you state? [84]

A. You can use the term you like, but it was on a salary.

Q. And you were working for Mr. Martin?

A. That's right.

Q. Now, during that period what demands did you make on Alaska Airlines for the payment of this \$219.30?

(Testimony of Arthur Oszman.)

A. Well, in later months I had reasons for coming to Anchorage—business reasons—and I had called them at the Merrill Field office—contacted them—and they again told me to be patient; that things were still in very much of a muddle.

Q. When was the first occasion on which you made a demand after you left their employment to—

A. I believe it was then probably November of that year.

Q. November of '45? A. Of '45.

Q. And of whom did you make that demand?

A. The treasury department of Alaska Airlines.

Q. Was that in writing?

A. Telephone contacts from the Westward Hotel.

Q. 1945—that was a telephone conversation?

A. Yes, and verbal contacts with Mr. Edwards.

Q. With whom? A. Mr. Ben B. Edwards.

Q. To whom did you speak at that time?

A. I met Ben B. Edwards at that time in Kodiak, who had taken up the—had been assigned as General Traffic Manager for the organization. Possibly those dates—I wouldn't say that it was within a month or so, but those are the people I contacted later on my arriving in Anchorage.

Q. Ben Edwards, then, and who else, if any?

A. And Mr. Perry, who was then Operations Manager.

Q. Mr. Perry? A. George Perry. [85]

Q. Now, were those verbal conversations, Mr. Oszman?

A. Yes, I thought that I would get much further

(Testimony of Arthur Oszman.)

if I took the time to contact them personally. I had had that luck in other fields in collections.

Q. When was the next time that you asked anyone for payment of this \$219.30?

A. On my trips from Kodiak to Anchorage with the same—

Q. Which particular trip, now? About what time? What date?

A. Latter part of March in 1946.

Q. March, 1946? And to whom did you speak on that occasion, Mr. Oszman?

A. I discussed that with Mr. Perry, I am quite sure.

Q. Mr. Perry? A. Mr. Perry.

Q. Was that—did you write him anything at that time, Mr. Oszman?

A. I stopped in his office to see him because he had understood the situation and had been in Juneau and had followed our operation longer than any other department head. He had a more thorough knowledge of it than others who were so frequently changed they were not familiar with their assignment.

Q. Now, when was the next occasion on which you asked payment of this claim, Mr. Oszman?

A. In September of '46.

Q. September, 1946? A. Mr. Perry.

Q. And to whom did you address that demand, Mr. Oszman?

A. On Fourth Avenue; I met him directly on the street.

(Testimony of Arthur Oszman.)

Q. Who?

A. I met him on the street. In fact, he offered me—

Q. Who? A. Mr. Perry.

Q. I am sorry, I didn't hear you.

A. —Who was Operations Manager of the company.

Q. And that was an oral conversation on Fourth Avenue? [86] A. Yes.

Q. Now, when was the next occasion upon which you asked for payment of this \$210.30?

A. The following day, bue he said: "We are so limited; by gosh, Art, I realize that, but get down to Juneau as fast as you can. We have only 30 days to operate."

Q. You then went back into the employ of Alaska Airlines?

A. Yes, I was again sold on it. It seemed as though they were sincere.

Q. When was that—when were you employed?

A. I think on the 14th of September. It could have been on the 13th of September, I am not sure—between the 13th and 16th—I am not certain. They have the records.

Q. Now, who re-employed you, Mr. Oszman?

A. Mr. Perry and Mr. Edwards.

Q. Mr. Perry and Mr. Edwards?

A. It was agreed upon by the two of them as we stood in the Alaska Airlines office.

Q. Now, did you have any conversation with

(Testimony of Arthur Oszman.)

them when you were re-employed about the \$2080 you claimed they owed you at that time?

The Court: What sum?

Mr. Kay: \$2008. I mean \$1208.83.

Mr. Nesbett: Where did you get that figure?

Mr. Kay: That is the figure he claims due at that time.

A. I understood it was \$1840.

Q. At that time—you went back to work for them. Now, at that time they owed you this, didn't they, according to this? (Handed something to the witness.)

A. No, plus the other forms which you sent—

Q. They owed you at least—

A. They owed me \$1840.53.

Q. When you went back to work?

A. No, they owed this plus the fare. [87]

Q. And how much is that, Mr. Oszman?

A. That is \$989.63, plus \$219—

Q. \$989.63 plus \$219.80, is about \$1219.43, isn't it? A. I haven't added it up.

Mr. Nesbett: \$1209—

Mr. Kay: \$1209.43. I will accept the amendment. I am a poor mathematician. Now, at that time you claimed they owed you \$1209.43, Mr. Oszman?

A. They admitted the obligation.

Q. But you claimed that at that time?

A. Naturally, I would continue to claim it.

Q. And to whom did you make claim? What discussion did you have concerning this \$1209.43?

A. With my immediate superiors. Naturally, that

(Testimony of Arthur Oszman.)

is the way those things are most frequently handled. That is the procedure used.

Q. Who was your immediate superior?

A. Mr. Ben B. Edwards.

Q. And what did you say to Mr. Edwards and what did he say to you?

A. Reminded him of those amounts.

Q. This was an oral conversation?

A. Yes, because we had frequent reasons to get together. He was assigning me to various projects.

Q. Well, would you tell the jury just what you said to Mr. Edwards and what Mr. Edwards said to you about this \$1209?

A. He merely said that there was no question about it being due; he would merely have to follow through in the normal channels; that he himself, too, had had problems similar to that and gone month after month without getting collections, so he readily agreed I was right. He was only one of the many who had similar situations.

Q. During this 17-month period you were working for Mr. Martin on Kodiak, did you ever at any time submit a demand in writing on Alaska Airlines for any part of this \$1209? Yes or no? [88]

A. No; verbally, I discussed that with Mr. Edwards in Kodiak.

Q. Did you ever submit any demand in writing on Alaska Airlines during the 17-month period you were working for Mr. Martin in Kodiak?

A. I didn't believe it was necessary at that time because it had been laid on Mr. Hedman's desk in midsummer of '44.

(Testimony of Arthur Oszman.)

Q. The answer is "no," then?

A. Verbally, yes.

Q. Written, no, is that right?

A. Not written at that time.

Q. Did you send any telegrams demanding that payment, Mr. Oszman?

A. No, they would only be charged up to me as other things have been. I used every method of collection prior to that time.

Q. You didn't send any telegrams; you didn't write any letter; is that correct?

A. I had a reason to correspond with—

Q. I just asked: Did you write any letters or send any telegrams? If you want to make an explanation you can make it through your attorney.

A. I wrote many letters.

Q. You wrote letters to Alaska Airlines during that period, asking for payment of this \$1209?

A. You asked me if I wrote letters. I said I wrote many letters.

Q. Did you write any letter to Alaska Airlines asking for payment? A. At various times.

Q. During this period on Kodiak Island?

A. No, those were verbal.

Mr. Nesbett: Your Honor, he has answered the question once.

Mr. Kay: Will you answer now?

A. Verbally, on Kodiak Island, except on the occasions when I was in Anchorage, which were made on various times which were in order, I believe. I would say that was a duplication of previous

(Testimony of Arthur Oszman.)

correspondence when all those other memos had failed. [89]

Q. I am asking for a statement of fact. You have testified to a number of verbal requests and some telephone conversations. I just asked whether you demanded it in writing? A. Many times.

Q. During this period from the time you left Alaska Airlines' employment until you returned to their employment?

A. Could you repeat that? What period? Specify the exact period?

Q. All right, the exact period: From September 19—wait a minute. When did you leave their employment the first time? A. June 30, 1945.

Q. All right, June 30, 1945, until September, 1946, during that period?

A. Verbal contacts with those individuals who were my immediate superiors.

Q. Verbal contacts? A. Yes.

Q. Not one written request, is that right?

A. They made notes of it to follow through with the Treasury Department.

Q. Did you, yourself, make any written request?

A. No, because they said it would be in the Treasury Department files.

Q. You did say "no," did you?

A. I said they were verbal.

Q. Thank you. Did you talk to a lawyer about this \$1209.80, or whatever it was, during that period?

A. Yes, in the States—a friend of mine.

(Testimony of Arthur Oszman.)

Q. What lawyer did you discuss it with?

A. By the name of—it was while I was back in the States—Tracey.

Q. Tracey? A. Joe Tracey.

Q. Where does Joe have his shingle out?

A. At that time the Commerce Building in St. Paul.

Q. Congress Building in St. Paul?

A. Commerce Building. [90]

Q. When were you in St. Paul, Mr. Oszman?

A. In November of 1946.

Q. November of 1946?

A. That is right.

Q. Well, that's after you had gone back to work for Alaska Airlines?

A. That is right.

Q. Well, did you discuss it with a lawyer during this period when you were on Kodiak Island working for Mr. Martin? A. Yes, I did.

Q. With what lawyer did you discuss it at that time? A. With Talmadge Smith.

Q. Smith? Is he down there at Kodiak?

A. I believe he is. He often came in the store and I told him that I had had that problem. There was nothing pressing about it; but he said that was nothing new, that many of the residents in Kodiak still were not given their passenger refunds on tickets they had submitted to the office, and so—

Q. And so you discussed this with a lawyer at that time? A. Yes, I did.

(Testimony of Arthur Oszman.)

Q. But you didn't file a suit against—

A. There was no need to, because they were very pleasant, but they seemed sincere. But I realize they are still, to this day, in quite a state of confusion.

Q. But you didn't file a suit at that time?

A. No, because I believe they were sincere and would—

Q. All right, let's pass on to your expenses while you were in Juneau, Mr. Oszman: Would you tell us just how this expense account worked, or this—

The Court: Before beginning that, we will take a short recess. Court will stand in recess until 11:30.

(Whereupon recess was had at 11:22 o'clock p.m.)

After Recess

The Court: Without objection the record will show all members of the jury present. [91]

Counsel may proceed with examination.

Mr. Kay: Thank you, your Honor. Mr. Oszman, what was your salary when you were employed by Alaska Airlines?

A. It varied. At one time it was as high as \$500 and expenses.

Q. What was your salary at the time you were employed?

A. The last—the re-employment?

(Testimony of Arthur Oszman.)

Q. No, your first employment at Fairbanks in 1944.

A. It started at 350 and climbed to 500.

Q. Well, now, it started at 350 in May, 1944, is that right? A. That is right.

Q. And when did you receive your first raise, Mr. Oszman? If you remember?

A. On the assignment to Anchorage about—it was either April or May.

Q. April or May of 1945?

A. No, of '44. No, I am sorry—I had spent almost a year in Juneau and then upon going to Anchorage I was given a raise.

Q. So, during the period of your employment in Juneau down until the time you were employed in Anchorage, your salary was 350 a month plus expenses? A. That's right.

Q. Now, at that time, Mr. Oszman, did you have any other employment? Were you working elsewhere?

A. My wife was employed at \$225 a month.

Q. Your wife was employed in Juneau?

A. Yes.

Q. Did you have any other employment, Mr. Oszman?

A. No, but I had income off of two homes in the States.

Q. You had income? Would you mind stating what that income was?

Mr. Nesbett: Object, your Honor—immaterial.

The Court: Objection is sustained.

(Testimony of Arthur Oszman.)

Mr. Kay: Your Honor, could I be heard very briefly?

The Court: Yes.

Mr. Kay: I feel it is material to show what the sources of income of [92] Mr. Oszman were during these periods when he asserts he was able to let the company run up a \$1200 bill on him.

The Court: I think not. We go too far afield if we go into that. The objection is sustained.

Mr. Kay: Now, Mr. Oszman, would you explain to the jury just how this petty cash fund was handled that you had in Juneau?

A. Shall I explain: Is that what you—

Q. Yes, please, will you?

A. Well, on expenditures—incidental expenditures—of the times which they authorized me to expend funds for whatever that was there was a form which those entries were made with the receipts attached; and in addition to that I had personal expense form. In addition to that there were receipts, and pilots often carried the correspondence back and forth. There were three or four or five methods of paid-outs. All were honored by the company.

Q. Well, what I was trying to get at was exactly how this petty cash fund worked. You had a hundred dollar check from the company which was petty cash, is that correct?

A. That was the starting figure, yes.

Q. Now, when you had used that hundred dollars petty cash fund what happened then?

(Testimony of Arthur Oszman.)

A. For any portion of it we would submit that with the paid statements and forward it via ship mail—pilot's pouch—to Anchorage.

Q. Was that only at the end of the month?

A. No, I believe there were times—it depended on the Treasurer; some desired it weekly, others by the month.

Q. Suppose you exhausted the petty cash fund in, let's say, three or four days. What would you do then?

A. It was a combination of personal funds, plus, as they instructed me, or directed me, to withhold my sales reports—my deposits—and take that cash and pay out on refunded tickets—use the tickets refunded—marked "refunded"—to support the lack of cash in order for the sales report to balance. It was [93] most inconvenient and awkward to handle it in that method, but they so directed me to do it.

Q. Well, if the petty cash was refunded—exhausted—in three or four days, wouldn't you then submit a statement, or whatever form supplied, and receipts attached, so the petty cash could be replenished?

A. That is true. However, as I said, the equipment we operated—no one had better equipment, however, weather was so at times when no aircraft operated along the coast for, I have seen, periods of 11 or 12 days in succession. Therefore, even though you submitted them they would be in your outgoing mail basket and never even leave your point of origin for that time. The same was true

(Testimony of Arthur Oszman.)

on the return. So a great deal of time could have elapsed, even though immediate attention were given.

Q. I see. But if the petty cash fund needed replenishing that would be done immediately, three, four or five times during the month?

A. Radio request. As I said, at various times I credited passengers at 102.50 each. They would arrive in Juneau, and that was the time the Maritime Commission controlled the movement of ships but I had the inside information confidentially from company officials, but in very bad weather—unflyable weather—and those groups could get off on boats and their destinations were Anchorage or the interior parts of Alaska, I was often put in an awkward position for the lack of cash in the petty cash or the ability to obtain more, because when weather was unflyable I could not ticket passengers originating in the Juneau area where I could create a new fund, and many times I would request by radiophone through Alaska Coastal—we had an arrangement there and I would direct those requests for funds via radio. Yet, it was impossible to get those funds back because of the elements which prevented it. Weather was one of the greatest—

Q. Now, did your petty cash fund remain the same throughout your period in Juneau?

A. No, because the revenue—I increased the revenue there from the low month of less than \$2000 to a high month of in excess of 18,000. There-

(Testimony of Arthur Oszman.)

fore, with the—you could call it—complaining on my part for more cash to operate, [94] based on the increased revenue, they did increase the cash. However, it was just as insufficient as it had been at a hundred dollars based on a much lower revenue per month—or activity at the station.

Q. What was your testimony yesterday concerning the amount of the petty cash fund?

A. At \$100, to begin with; for months it was 100—it started at a hundred dollars.

Q. Didn't you testify that it was a hundred dollars throughout your period in Juneau?

A. I said, as I recall, for a period of months.

Q. I will show you this and ask if you ever saw the original of which that is a copy?

A. I believe I did. This is January 15, 1945. It came from Colonel Castner's office.

Q. Did you receive the original of which that is a copy, Mr. Oszman?

A. The girl handled the cash in the office. I assume she did.

Q. Well, do you know whether or not your petty cash fund was increased at that time?

A. It was; it would be approximately that time. As I said, it was months and then the upward amount was approved.

Mr. Kay: I would like to offer this in evidence, your Honor, as Defendant's Exhibit 1.

The Court: It may be shown to counsel for the plaintiff.

(Testimony of Arthur Oszman.)

(Mr. Kay handed document to Mr. Nesbett.)

Mr. Nesbett: Did you state, Mr. Oszman, that you did receive the original of which this is a copy?

Witness: No, I said the girl obviously had received it, and—

Mr. Nesbett: No objection.

The Court: It may be admitted and marked Defendant's Exhibit A.

(Defendant's Exhibit A admitted in evidence.) [95]

The Court: It may be read to the jury.

(Mr. Kay read Defendant's Exhibit A to the jury.)

Mr. Nesbett: Is there a date on that?

Mr. Kay: I read the date, 1/15/45. Now, Mr. Oszman, your testimony yesterday—you testified concerning various specific items which you were required to pay in Juneau, and I would like to lay this before you so that you can refer to it, perhaps—

Court: Is that an exhibit?

Mr. Kay: That is an exhibit, sir. That is Plaintiff's Exhibit 3. Now, I believe you—the specific items which you mentioned yesterday, Mr. Oszman, were certain ticket refunds to passengers, is that correct?

A. It had nothing to do with this.

Q. In other words, your ticket refund to passengers had nothing to do with that?

A. No, they were set up on another form altogether. This is merely a notation.

(Testimony of Arthur Oszman.)

Q. Didn't you testify yesterday you sometimes were required to make ticket refunds to many passengers coming into Juneau?

A. Yes, as high as 10 and 20 at a time.

Q. And was that out of your personal funds?

A. That would come with a combination, as I said—withholding the sales reports or the bank deposits plus digging into my personal pocket.

Q. But there is no part of that appears on this?

A. No, these are incidental expenditures such as magazines, beer, such as an aircraft developing mechanical trouble en route at a station at which it was not scheduled to stop, persons other than company personnel directing the mechanics and the pilots requesting some sort of compensation.

The Court: Can you remember to speak louder, Mr. Oszman?

Mr. Kay: Well, now, you mentioned yesterday specifically certain purchases for Yakutat Army personnel, correct? A. Yes. [96]

Q. And I believe that there was a letter admitted as an exhibit, was there not? A. Yes.

Q. In which you were authorized to expend, I believe, \$10.00 per week?

A. Yes. That was based on the number of schedules they were operating at the time. Your schedules fluctuated on an upward basis. Any additional schedules, therefore, would require additional time by Army personnel for Alaska Airlines. The pilots

(Testimony of Arthur Oszman.)

at the time experiencing that sort of thing would request the items from the Juneau office above that figure.

Q. Well, now, Mr. Oszman, one paragraph of that letter reads as follows: "It will be required that a receipt for the articles purchased, which are to be turned over to the pilots for delivery, be obtained for each shipment of merchandise. This receipt should be made out by the District Manager and should be signed by the pilot receiving the merchandise. The receipt so obtained will be attached to the invoice substantiating the disbursement from the petty cash fund." Is that the procedure that was followed? A. Yes.

Q. Now, do any of these items for purchase for Yakutat personnel appear on those accounts?

A. Yes, there were, similar to that—not identical, but similar, as I said, as pilots requested them. Pilots had authority to make more expenditures because we did not maintain company personnel at intermediate points along the route and it was by far the cheaper method of completing our operation.

Q. But it is your testimony that a certain indefinite amount—?

A. Expenditure similar to that, yes.

Q. For Yakutat personnel?

A. And Gustavus.

Q. And Gustavus, were included in that item on the account? A. Yes.

(Testimony of Arthur Oszman.)

Q. Were they substantiated by receipts? [97]

A. They were, and given to the pilots.

Q. But you have lost everything except that slip, is that correct?

A. Well, I had the complete record as late as May or June of 1945 when they were placed on Mr. Hedman's desk—I mean similar to that—as recorded in this recap.

Q. Then it is your testimony, for each one of those months you presented the company with an itemized statement supported by receipts and vouchers, is that correct, Mr. Oszman? A. Yes.

Q. And that you kept, now, no copies yourself, is that correct? A. No.

Q. That is not correct?

A. Other than this recap sheet.

Q. Other than the recap sheet?

A. That is right.

Q. Now, what is the item—the amount—for the first month, Mr. Oszman? A. 74.25.

Q. And do you recall any specific item of expense included in that \$74.00, Mr. Oszman?

A. Oh, I know there were cab bills in there where I was required to go to the field. There were room accounts. There were meals purchased for passengers who were delayed on an involuntary basis.

Q. And that came to that \$74.00 figure?

A. The combination of those items.

Q. What is the figure for the second month, Mr. Oszman? A. \$105.70.

(Testimony of Arthur Oszman.)

Q. Can you recall any specific items in that amount?

A. They were along the same lines such as I say, room expenditures—

Q. You don't recall any specific item, do you—or do you?

A. If I had the monthly statement which the Treasury Department has it would be easy to identify them. [98]

Q. And how about the next month?

A. \$84.00.

Q. Do you recall any specific items there?

A. Well, there were probably laundry charges or items such as that for the CAA at Gustavus where we had paid for the laundry which had been soiled by passengers which we had laid overnight due to weather and attempt to get into Juneau—items such as that, I mean. It was always along the same line. It was company expense for the comfort of the passengers of Alaska Airlines—not personal expenses.

Q. Glancing down the remainder of the months, can you recall any specific items during any of those months?

A. I believe during August—it was either August or September—there was a group of 14 Congressmen of the Aviation Committee that was traveling through the Territory and it was my responsibility to entertain them in Juneau, and I was authorized to expend \$200 or more if it warranted it. I know one amount of 200, or in excess of

(Testimony of Arthur Oszman.)

200, was submitted on another form; but some of these entries here would have come about for cab bills or incidentals as they were given fishing trips, as I was instructed to do by the Chairman of the Board, Mr. R. W. Marshal. He said in all cases, do take good care of those people because in Anchorage we spent \$1300 on them on a banquet alone. It was expenditures such as that I was directed to make. But it is difficult to—

Q. Now, I believe you testified yesterday concerning a telegram received ordering you to purchase certain oil barrels, is that correct?

A. Yes.

Q. Was that, any part of that specific item concerning those oil barrels and that shipment of 50 drums of gasoline included in any of that, Mr. Oszman?

A. I don't believe so. It was just one of the various items of expenditures I was required to make, or to commit the company to—

Q. Yes. Do you believe that any part of that Standard Oil barrel transaction is included in those items?

A. No, none at all. I would say none.

Q. And none of the passenger refunds, is that right? [99] A. None.

Q. Now, I take it that at the end of the first month there, you submitted an itemized statement to Alaska Airlines and asked for payment, is that correct? Is that your testimony, Mr. Oszman?

A. No, this was—I don't believe so. This was

(Testimony of Arthur Oszman.)

merely a recap. Those were submitted month by month.

Q. Did you submit them month by month?

A. Month by month.

Q. And at the end of the first month you submitted a statement for \$74.00, I believe?

A. Yes.

Q. 74? A. Yes, 74.25.

Q. All right, and what happened then, Mr. Oszman? Did you receive payment for that?

A. No.

Q. So that rode along, is that your testimony?

A. Yes. Yes.

Q. And then at the end of the second month you submitted a statement for how much?

A. 105.70.

Q. And was that paid? A. No.

Q. And that rode along? A. Yes.

Q. Now, at the end of the third month you submitted a statement for how much? A. \$84.00.

Q. And was that paid? A. No.

Q. And during the months thereafter you submitted statements in the amounts on that recap, Mr. Oszman, is that your testimony? [100]

A. That's right.

Q. And none of those were paid?

A. They were not.

Q. Now, do you know whether or not any of those—I believe there is a blank space on these expense sheets, is there not, Mr. Oszman? I will show you Plaintiff's Exhibit 16, purporting to be a

(Testimony of Arthur Oszman.)

copy of an expense sheet. Is there a space on there in the middle of the page for approval by a company official—right down at the bottom of the middle of the page? A. There is.

Q. Now, do you know whether or not any of these expense accounts which you submitted, which you state that you submitted during this period, do you know whether or not any of those were ever approved in that space by a company official?

A. I had never seen them after they were submitted. Those payments which I received I merely received the check.

Q. What payments were those, Mr. Oszman?

A. Oh, I received, as I said, on several trips I was given my expenses in advance. I merely filled out those forms to balance with the funds which were given in advance.

Q. I think you testified that you never saw them again—these statements which you submitted for the recap, is that correct?

A. Generally, you don't see them again.

Q. But did you see those again?

A. Of my copies?

Q. No, the originals you submitted to the company? A. The originals, no.

Q. So you don't know of your own knowledge whether or not they were approved by company officials?

A. They verbally committed themselves.

Q. Do you know whether or not the proper company official wrote on the sheet "approved" and put his initials on it, Mr. Oszman? [101]

(Testimony of Arthur Oszman.)

A. I don't know whether they had or not.

Q. Now, after you failed to receive your payment for the first month, Mr. Oszman, what—did you write any letters to any company officials asking for payment of that amount?

A. I said they were frequently coming through Juneau—

Q. Did you write any letters.

A. Notes on the "Avoid Oral Instructions" form, such as was the company procedure.

Q. Do you have any copies of those notes you wrote?

A. You don't usually make copies of those "Avoid Oral Instructions." There is just the original.

Q. There happen to be copies of at least two of them around here, Mr. Oszman.

Mr. Nesbett: Where are they?

Mr. Kay: One was just admitted as an exhibit, Mr. Nesbett. But other than these notes which you state you wrote on the "Avoid Oral Instruction" card, did you write any letters to the company asking for payment? A. Yes, I had.

Q. You did? To whom did you address those letters?

A. To the department heads. One was Colonel Castner.

Q. When did you write Colonel Castner?

A. I don't recall the date, but it was in the fall.

Q. Of what year? A. '44.

(Testimony of Arthur Oszman.)

Q. Fall of '44? A. That's right.

Q. And what did you say to Colonel Castner in that letter, Mr. Oszman?

A. Merely reminded him of those expenses which I had incurred which he had in written form authorized me to make and failed to acknowledge in the form of checks. [102]

Q. You say Colonel Castner authorized you to make those expenditures in written form?

A. Yes, there is correspondence in the file where he directs me to do that sort of thing.

Q. Not in evidence in this case, is it?

A. It is in the file.

Q. But is not in evidence in this case?

A. Not at the present time.

Q. It wasn't introduced during your direct testimony? A. No, sir.

Q. Now, you wrote a letter to Colonel Castner some time in the fall, is that right?

A. Oh, I believe it was an "Avoid Oral" form, similar to the one you had.

Q. Was that in your handwriting or on the typewriter?

A. That was typewritten, as I recall it.

Q. Did you make a carbon copy of that, Mr. Oszman? A. I don't believe so.

Q. Well, now, when was the next time that you made a written request on a company official for payment of these sums which were accumulated? A. I don't recall the dates.

Q. Do you recall making any further written re-

(Testimony of Arthur Oszman.)

quest on the company for payment, Mr. Oszman?

A. I had at later dates. I don't recall the—

Q. You say at later dates?

A. At later dates I had written letters.

Q. To whom were those letters written?

A. To the department heads.

Q. What department heads?

A. At one time, the Traffic Manager was Phil Seno.

Q. You wrote who? [103]

A. Phil Seno.

Q. About when did you write him, do you remember?

A. It was probably in—oh, it might have been August—September.

Q. Of what year? A. Of '44.

Q. '44?

A. Or November—as late as November, it would be.

Q. August to November, some time during that time, you say you wrote Phil Seno?

A. I am quite certain of it.

Q. And was that on an "Avoid Oral Instruction" form?

A. Yes, on the forms we generally use for that type of—

Q. Was that typewritten?

A. I am certain it was.

Q. Did you keep a carbon copy of it?

A. No.

(Testimony of Arthur Oszman.)

Q. When was the next time you wrote anybody and asked for payment, Mr. Oszman?

A. It would have been, I imagine—as I said, it was in December that I made the trip to Anchorage and contacted him direct. It would be in the spring, then.

Q. In the spring? Now, to whom did you write on that occasion, Mr. Oszman?

A. It was either to Harold Nordman or Hazle Rich, who was in charge at that time.

Q. Harold Nordman? A. Nordman.

Q. Nordman? And this is in the spring of 1945?

A. I'd say approximately that.

Q. What month? Could you pin it down that close?

A. It is difficult without the forms.

Q. Well, the spring of 1945? [104]

A. Yes.

Q. Now, what did you write that letter on, Mr. Oszman—"Avoid Oral" request?

A. Most any interoffice correspondence blanks which we had. I mean it could be various times.

Q. Did you keep a carbon copy of that letter?

A. No, we were in the habit of just putting them in the envelopes in the outgoing baskets—merely reminder—

Q. But you didn't keep carbon copy?

A. No, because I had an accurate check.

Q. Well, when was the next letter you wrote demanding payment, Mr. Oszman?

A. I probably—in May of '45.

(Testimony of Arthur Oszman.)

Q. May of '45? And to whom did you write on that occasion? A. To T. N. Law.

Q. T. N. Law? And was that also on an informal form?

A. Yes, in company mail—no stamps—merely thrown in company mail.

Q. And what did you say to Mr. Law in that letter? In May, 1945?

A. Merely inquired as to how—what progress was being made with my personal situation there regarding the funds in arrears at Juneau that we had discussed on several occasions while he was in Juneau.

Q. At that time how much did you claim they owed you, Mr. Oszman—in May, 1945?

A. That would be 989.63.

Q. Plus the 219.80?

A. By that time it was due, yes.

Q. So you wrote Mr. Law this little note asking for payment?

A. Yes. Mr. Law was President, as I recall, at that time.

Q. When did your employment end, June 30?

A. June 30 of 1945.

Q. Did you make a written demand on the company for payment at that time, Mr. Oszman?

A. No, because I was conveniently located here in Anchorage and had reasons to be at the Treasury Department almost on a daily basis. [105]

Q. In the Treasury Department on a daily basis then?

A. Almost; the offices were consolidated at that time. Our offices were at the field.

(Testimony of Arthur Oszman.)

Q. And were you getting a little worried about your \$1209?

A. No, because Mr. Law assured us that there was so much new money in the Company that things would come along all right.

Q. Now, you were earning, were you not, \$4200 a year?

A. It had been increased then to \$6,000.

Q. But that was after you came to Anchorage, was it not? A. That is right.

Q. That last six weeks?

A. Yes, he compensated me in that respect, which was a fine gesture on his part, and if it were not warranted—

Q. During those previous months that you had been employed, 350 a month? A. Yes.

Q. And the company now owed you \$1209, is that correct?

A. Approximately that figure, yes.

The Court: I think we will suspend now. The trial will be continued until two o'clock.

(The Court then duly admonished the trial jurors about discussion of the case, and recess was had at 12:05 o'clock p.m.)

Afternoon Session

The Court: Roll of the jury may be called.

(Jurors in the box were all present.)

The Court: Plaintiff may resume the witness stand and counsel may proceed with examination.

Mr. Kay: Now, I believe, Mr. Oszman, that you

(Testimony of Arthur Oszman.)

testified that when you were re-employed in September of 1946 you were to spend some time in Juneau, is that correct? A. Yes. [106]

Q. And I believe you testified that you flew down to Juneau on a proving flight of Alaska Airlines, is that correct? A. That's correct.

Q. But that your wife flew down aboard PNA, is that correct? A. That's right.

Q. And I believe that you testified that you later requested payment of your wife's fare to Juneau? A. That's correct.

Q. Do you recall when you first submitted the request for that payment, Mr. Oszman?

A. I don't recall the exact date, but I am sure it was following the series of trips which I was making for the company.

Q. In other words, it was following your trips to Minneapolis and St. Paul?

A. Yes, I believe it would be in the period of December—probably be the earliest that I got back to that.

Q. Then you believe you submitted a statement to Alaska Airlines requesting the payment of the \$80.50 for your wife's fare to Juneau some time in December? A. Yes, to Ben Edwards.

Q. To Ben Edwards? A. Yes.

Q. Now, was that some kind of a printed statement?

A. It was a note in the company envelope, sent aboard the aircraft mail—pilot's pouch is what we termed it.

(Testimony of Arthur Oszman.)

Q. Was it a statement in this form, Mr. Oszman? I am showing you Plaintiff's Exhibit No. 7.

A. No, this is a copy of my record of the expenditures. It was not in that form.

Q. Well, is this a copy of—I think you said, of your record of the expenditures? [107]

A. It is a copy of my record.

Q. Was the orginal, of which this is a copy, sent to Alaska Airlines? A. Not to Mr. Edwards.

Q. To anyone in Alaska Airlines?

A. To the Treasury Department.

Q. Do you know when the original, of which this is a copy, was sent to the Treasury Department?

A. Later on at the end of that year or the following two or three months.

Q. Would it be as late as March, 1947?

A. It could be. It could have been.

Q. Up until that time, then, up until March of 1947 would the Treasury Department have been notified that you expected them to pay the \$80.50 for your wife's transportation?

A. They should have been advised.

Q. By whom?

A. By my immediate superior.

Q. Who was your immediate superior?

A. Mr. Edwards.

Q. In other words, you had written Mr. Edwards a note, I believe you said? A. Yes.

Q. On the interoffice memo? A. Yes.

Q. Was a carbon copy made of that?

(Testimony of Arthur Oszman.)

A. I don't believe so. If it was I think it would be in the Seattle office.

Q. And on the basis of that you believe Mr. Edwards would tell the Treasury Department to pay you this \$80.50, is that the idea?

A. Yes, because they had occasion to come into Seattle—they had acknowledged receipt of it—

The Court: Can the jurors hear the witness?

Jurors: Very slightly. [108]

The Court: Well, if you want your story heard you had better talk louder.

Mr. Kay: I was asking, Mr. Oszman, if you expected Mr. Edwards to inform the Treasury Department of this amount that you claim for your wife's transportation?

A. Yes, because it was a procedure we used, submitted them through our department heads as they were the ones who originally authorized that type of expenditures.

Q. And it is also your testimony that a statement which would come to the Treasury Department's attention direct might have been sent as late as March, 1947? A. Yes. Yes.

Q. I believe you testified yesterday that you made only one demand for that payment, is that correct? A. I believe so.

Q. Now, when did you first make demand on the company for the payment of the **Gastineau Hotel** bill for you and your wife?

A. That was upon the completion of the trips on the survey back into the midwestern area, as

(Testimony of Arthur Oszman.)

that was part of my file that remained in Juneau and it was delayed in reaching Seattle because of the fact it was in with some of our belongings that were shipped by boat.

Q. Mr. Oszman, I will show you Plaintiff's Exhibit 8, the Gastineau Hotel bill, and I will ask you, first, do you observe anything about the date in the upper right hand corner of the statement?

A. Yes, I do. It's 1947.

The Court: I wonder if counsel would mind standing back further—back on the other side of the table or near the end of the jury box, so that the witness will be compelled to raise his voice in order to make counsel hear.

Mr. Kay: Thank you, your Honor.

The Court: Then the rest of us may be able to hear. Counsel may sit down if he desires, but I would like to have him get quite a ways away from the witness. [109]

Mr. Kay: I will be glad to stand. I will just have to transfer these papers. Now, I was asking Mr. Oszman, when was the first occasion on which you presented that hotel bill to the Treasury Department or to the Alaska Airlines—anyone—for payment?

A. It was either in December or the first few months of '47. This was requested from the secretary of the Baranof Hotel who had, at the time of our stay, been a room clerk at the Gastineau, and in transit these were billed on a weekly basis and grouped in our luggage and I believe this is a

(Testimony of Arthur Oszman.)

paid statement which is taken from their records and I use this as support to the claim as I paid this on a weekly basis. This is a total expenditure during our stay there.

Q. Glancing at the date in the upper right hand corner, Mr. Oszman, would it be your impression in looking at that that the "7" on the end of the "1947" had been changed?

A. It looks as though it had been, or heavily marked in.

Q. In other words, the "7" is marked in, apparently, with pencil? A. That is right.

Q. And how about the date which appears down farther, has that apparently been changed also?

A. Yes.

Q. Do you have any idea who or why that change was made?

A. I believe that the girl explained that in her letter. I had asked for the compiling and total of that expenditure in Juneau. She supplied it, and I believe those are her figures or markings on this statement—this paid statement.

Q. Did you ever include the Gastineau Hotel bill on any of your expense accounts to the company, Mr. Oszman?

A. I had previously on the other hotel in Juneau—the Baranof.

Q. Did you include this item in the expense account? A. Not to my knowledge. [110]

Q. Could it be that the first time that this bill

(Testimony of Arthur Oszman.)

was presented for payment was at about the time you wrote those letters, March 10 and 13?

A. I—I am not certain.

Q. Could it be that it was that late?

A. It could have been, as I explained before the reason for it.

Q. Well, now, Mr. Oszman, who was the Comptroller or Treasurer of the company at the time you were re-employed in September of 1947?

A. I believe it was Mr. Griffin.

Q. Do you know Mr. Griffin?

A. Only as a business acquaintance.

Q. In your capacity as an employee of Alaska Airlines did you ever have any conversations with Mr. Griffin between the time you were re-employed and the time you terminated the second time?

A. In Seattle.

Q. And how much conversation did you have with Mr. Griffin?

A. Not more than one in the Seattle area.

Q. Well, anywhere?

A. Not during that period of time.

Q. From the time you went back to work until the time you quit, only saw him once.

A. Only recall once.

Q. Now, what was the occasion on which you saw him that once?

A. It was while he was waiting over for a plane connection eastbound to New York. There were a number of things he wanted to discuss, but because of the—he was being pressed for time, he

(Testimony of Arthur Oszman.)

said that he would discuss all those station problems upon his return from New York.

Q. About what date was that, if you recall, Mr. Oszman?

A. Just before the Christmas holidays, I would say—approximately.

Q. Just before Christmas of 1946?

A. Yes.

Q. Well, now, did you on that occasion bring to Mr. Griffin's attention [111] the fact that you had a claim against the Alaska Airlines of quite a considerable standing in the amount of somewhere around \$1200?

A. Not at that time because of appearing so busy and volunteering to spend the amount of time required to go over any problem we had upon his return.

Q. Then you did not mention the amounts that you claimed were due from Alaska Airlines to Mr. Griffin, the Comptroller or Treasurer of the company on this one occasion you saw him, is that correct?

A. As I recall it I did not.

Q. Now, did you, during the time of your second period of your employment have any occasion to write Mr. Griffin?

A. Yes, in December—not written, it was a wire.

Q. Sent Mr. Griffin a wire? Well, now, is that the wire which was, I think, offered in evidence yesterday but not admitted?

A. I believe it was.

(Testimony of Arthur Oszman.)

Q. Now, did you at any time during the second period of your employment write Mr. Griffin a letter, either requesting or demanding payment of any of the sums due you?

A. Yes, approximately the 13th of March in '47.

Q. March, 1947? A. '47.

Q. That is the first time that you wrote him, is that correct? A. That's true.

Q. Other than the telegram to which we just referred—the one which was offered yesterday—did you send him any wires during that period requesting payment? A. No, now—

Q. Now, *Mr. Griffin*, at various points of your testimony you have referred to various persons. You have referred to Mr. Odenwalder. Is Mr. Odenwalder still employed by Alaska Airlines, if you know?

A. I don't think directly. He may have stock.

Q. Is Mr. Castner still employed by Alaska Airlines, if you know? A. Not to my knowledge.

Q. Mr. Law? A. As a director.

Q. Is he still employed?

A. As a director.

Q. He is a director of the company at the present time? A. I am quite sure.

Q. How about Mr. Hedman, is he still employed?

A. Not to my knowledge.

Q. How about Mr. Ben Edwards, is he still employed? A. I am not certain of that.

Q. How about Mr. George Perry, is he still employed? A. I don't think so.

(Testimony of Arthur Oszman.)

Q. How about Mr. Phil Seno, is he employed?
A. Not to my knowledge.

Q. How about Mr. Harold Nordman, is he still employed? A. I don't believe so.

Q. In other words, as far as you know, none of the gentlemen with whom you had these verbal conversations are still employed by Alaska Airlines, is that correct? A. That is true.

Q. Now, Mr. Oszman, you testified yesterday concerning your trip to Seattle at the request of Mr. Edwards, and from there on to Minneapolis and St. Paul, correct? A. That is true.

Q. And I believe you testified that Mr. Edwards wired from Minneapolis and had your Seattle office—the Seattle office of Alaska Airlines—send you \$150, is that correct? A. He did. [113]

Q. Now, did you receive that \$150?

A. I did.

Q. And was that \$150 an advance on expenses?

A. An advance on expenses, yes.

Q. Advance on expenses? Now, did you thereafter—after your return from Minneapolis and St. Paul—present an expense account or an accounting showing how you spent the \$150?

A. I had spent far greater sums than that prior to the arrival of the 150, and the 150 was absorbed during that project.

Q. Did you present any expense account covering that \$150? A. Yes, I did.

Q. You did? A. Yes.

Q. When did you present that?

(Testimony of Arthur Oszman.)

A. To cover that period of the trip.

Q. Well, when did you present it?

A. I believe it was at the end of November.

Q. Was that November expense account honored and paid? A. It was.

Q. The November expense account, including this \$150, was honored and paid, correct?

A. The 150 was not honored.

Q. I thought you said it was included in your expense account?

A. It was included, yes, and it was paid and then deducted from the following pay check.

Q. In other words, at a later time Mr. Griffin notified you that he was not allowing the \$150 and deducted it from your payroll, is that correct?

A. After he had approved and the check was in my hands covering that same expense—approved and sent to me.

Q. Now, let's see how this worked: You were then in Seattle, were you not? [114]

A. I returned to Seattle, yes.

Q. When you returned to Seattle isn't it a fact that you would withdraw funds from the petty cash funds in the office and then submit an expense account justifying them?

A. No, sir, I never had that opportunity in the Seattle office. It was not my home base.

Q. Wasn't it your home base after you went there from Juneau? A. No, sir.

Q. In the fall of 1946?

A. Not until December 12, 1946.

(Testimony of Arthur Oszman.)

Q. Well, when did you make the trip to Minneapolis?

A. I believe it was the 28th or 29th of November—of October—1946.

Q. You went there from Seattle, did you not?

A. From Seattle.

Q. And you returned to Seattle from Minneapolis, did you not?

A. And then to Juneau.

Q. Then back to Juneau?

A. Which was a temporary base.

Q. You went from Juneau to Seattle; from Seattle to Minneapolis; from Minneapolis to Seattle and back to Juneau, is that correct?

A. To Seattle; and permanently assigned to Seattle, yes.

Q. I get it. All right, now, when was the deduction from your pay check made, Mr. Oszman?

A. On the next pay period.

Q. Are you sure of that?

A. Definitely. I have the payroll stub.

Q. The next pay period after your return from Minneapolis? A. That's true.

Q. Isn't it a fact that the payroll deduction was made on January 15, 1947?

A. The payroll stub has the definite date of the withholding amount, or the amount withheld, rather.

Mr. Kay: Your Honor, would it be proper for the purpose of refreshing the witness' recollection to show him an exhibit which has been marked for

(Testimony of Arthur Oszman.)

identification only and not admitted in evidence—just to refresh his memory?

The Court: You may show it to him if you desire.

Mr. Kay: I show you this telegram, Mr. Oszman and ask you if that refreshes your recollection as to when the payroll deduction was made?

A. That's on January 17.

Q. Now, I believe you testified yesterday that in your capacity as District Traffic Manager in Seattle you were paid a salary of \$400 per month and expenses, is that correct?

A. That's correct.

Q. And I will show you Plaintiff's Exhibit 14 and ask you if that refreshed your recollection as to when that salary increase was made?

A. It was to have applied in Juneau but was not effective until I was assigned to Seattle, as he admits here, which was a company error.

Q. Let me ask you if Plaintiff's Exhibit 14, which might be somewhat ambiguous to the jury, refers to anything other than the adjustment in your salary check to take care of this increase in salary from 350 to 400?

A. I don't believe there is.

Q. That refers only to that increase in salary, is that correct? A. That is correct.

Q. It occurred to me there might be some question in the jury's mind about that point. This is the letter from W. R. Lynn, which the jury may recall was read, addressed to Mr. Oszman stating

(Testimony of Arthur Oszman.)

that the "information contained in your letter dated December 20, * * * has been passed on to the Accounting Department with a request that an adjustment be made on your salary and included in the forthcoming check" and goes on like that. I thought there might be some confusion as to other claims which Mr. Oszman—Mr. Oszman, when you got to Seattle in December did you, at the end of December, submit an expense account to the Treasury Department of Alaska Airlines? [116]

A. Yes, they were submitted by each month.

Q. And was that expense account honored and paid? A. It was.

Q. How about January, did you submit an expense account? A. It was.

Q. Was that expense account honored and paid?

A. It was honored and paid.

Q. Now, as a matter of fact, by "honored and paid"—you had previous to submitting the expense account, reimbursed yourself out of funds in the Seattle office?

A. I never had access to the Seattle funds.

Q. In other words, it is your testimony that those expenses were paid by you out of your pocket and you then sent a statement to the Alaska Airlines and they sent you a check, is that correct?

A. That is true.

Q. For December and January?

A. That is true.

Q. Now, did you, toward the end of January,

(Testimony of Arthur Oszman.)

receive a notice of any kind from Mr. Griffin concerning your expense accounts?

A. I had no directive from Mr. Griffin.

Q. You didn't receive a notice from Mr. Griffin of any kind? A. In January?

Q. In either February or January—December or January?

A. I personally received none from Mr. Griffin.

Q. Did the Seattle office receive any?

A. I couldn't say. I was in charge of the Seattle office, but nothing had been directed to me personally from Mr. Griffin.

Q. Do you know—what was the name of the employee? Do you know whether or not Mr. Brockus received any notice from Mr. Griffin concerning the use of the petty cash fund in the Seattle office? [117]

A. That I do not know.

Q. Do you know whether or not Mr. Brockus received any information?

A. I am not certain of that. I know I received none.

Q. Following the end of January did you draw any funds out of petty cash, or otherwise, in the Seattle office?

A. There was a time during Mr. Hoppin, the President's, stay, when the expense accounts were delayed because of Mr. Griffin's trips, I believe, Mr. Hoppin stated. He authorized a small amount advanced to me as we had some cannery connections contacts to make. There's probably one or two

(Testimony of Arthur Oszman.)

he authorized out of that office—not myself—they were authorized by the President of the company.

Q. So now, after—did you submit an expense account for February, 1947? A. I did.

Q. Was it paid? A. No.

Q. Did you submit an expense account for March, then?

A. I submitted one for March.

Q. And was it? A. No.

Q. All right. Now, when was the first day, Mr. Oszman, that you knew that you had been terminated by Alaska Airlines?

A. Well, it would be between the 10th and as late as the 15th of March.

Q. Between the 10th and the 15th?

A. And the 15th of March.

Q. Is that correct?

A. I had rumors of it.

Q. You had heard rumors of it? A. Yes.

Q. Previous to it, is that correct?

A. Not prior to the 10th, but between the 10th and 15th of March. [118]

Q. Did you see Mr. Marshall Hoppin and Mr. Lynn on a trip to Seattle the end of February or first of March, 1947, Mr. Oszman?

A. I saw Mr. Hoppin in Seattle on, as I recall, the third, fourth, fifth of March.

Q. Mr. Lynn with him?

A. I don't recall Mr. Lynn.

Q. Well, isn't it a matter of fact that Mr. Hop-

(Testimony of Arthur Oszman.)

pin and Mr. Lynn were in Seattle either the last week in February or the first week in March and that Mr. Lynn informed you at that time that you were separated effective in about two weeks or so?

A. No, sir.

Q. You deny it? A. That's true.

Q. So that the first time you heard any rumor that you would be terminated was on or about March 10? A. That is true.

Q. And so that you had heard a rumor of your termination at the time that you wrote these two letters which you offered in evidence yesterday on March 13?

A. It was about that time, yes.

Q. When you addressed those letters to Mr. Griffin you knew that you had been terminated, is that correct? A. I wasn't certain.

Q. But you had heard a rumor to that effect?

A. Yes.

Q. Had you ever previously, Mr. Oszman, at any time, made any demand, oral or in writing, or Mr. Griffin, the Comptroller or Treasurer of Alaska Airlines, for payment of any part of the account due you? A. In March of '47?

Q. In March of '47 is the first time, is that correct?

A. The first opportunity. [119]

Q. That is the first time?

A. First opportunity, yes.

Q. Mr. Griffin was Treasurer or Comptroller of the company at the time you were employed by

(Testimony of Arthur Oszman.)

Alaska Airlines in September of 1946, was he not?

A. I am certain of it.

Q. And he was Treasurer or Comptroller continuously from the time you were re-employed the second time down to the time you were terminated, was he not? A. That is true.

Q. And the first time you made any demand on him was in March, 1947, is that correct?

A. That is true.

The Court: Is there any further direct examination?

Mr. Nesbett: Yes, your Honor. May I have a moment, please?

The Court: Court will stand in recess until 2:40.

(Whereupon recess was had at 2:35 o'clock p.m.)

After Recess

Redirect Examination

By Mr. Nesbett:

Q. Mr. Oszman, what period of time were you at Kodiak acting as agent for Alaska Airlines?

Mr. Kay: I object to that question, your Honor. The witness was not acting as an agent for Alaska Airlines. He was working for a man who was acting as an agent.

The Court: Objection is sustained.

Mr. Nesbett: Well, what period of time were you in Kodiak, Mr. Oszman?

(Testimony of Arthur Oszman.)

A. From the second day of July, 1945, until April of '46.

Q. And can you state why you did not make written demand upon Alaska Airlines for reimbursement for the 1200 some odd dollars you claimed they owed you?

A. Because on my trips to Anchorage I brought it to their attention by telephone contact or personal contact with the officials. [120]

Q. Is it a fact that during that period your detailed expense sheet and the demand for reimbursement for the \$219.30—records of all that were in Alaska Airlines' office?

A. They had been since May or June on the Treasurer's desk.

Q. Mr. Oszman, were you promised reimbursement by any official of Alaska Airlines for the cost of your wife's transportation to Juneau?

A. By both Mr. Perry and Mr. Edwards.

Q. And where was that promise made, if you recall?

A. On the day that I was rehired by them.

Q. Where was that?

A. In the office on Fourth Avenue—the traffic office.

Q. Did you ask them specifically if they would reimburse you for the cost of her transportation to Juneau? A. Yes.

Q. Did you ask them—did they ever at any time promise to reimburse you for hotel expenses incurred in Juneau? A. They did.

(Testimony of Arthur Oszman.)

Q. Where did that promise take place?

A. At the time that I was rehired they knew that those expenses would be incurred, that Juneau would be a temporary location and that they would be subject to those additional costs.

Q. And was it at that time that they promised to reimburse you for those unusual expenses?

A. They merely said to submit them in the normal manner.

Q. Mr. Oszman, can you state why you did not make a written demand for reimbursement from Mr. Griffin after you were rehired and during the time you were in Juneau?

A. I had made a verbal request to Mr. Bartoo, I believe, who had made a trip in there, who had considerable accounting experience, but was a Vice-President of the company at the time of his visit during that month.

Q. I asked you why you didn't make a written demand upon Mr. Griffin during that period? [121]

A. Because I assumed that the available information was still on file in the Treasury Department where it had been left.

Q. And how long were you in Juneau before you went to Seattle?

A. About—the family was there about six or seven weeks, until November 22—from mid-September.

Q. Why did you not make a written demand upon Mr. Griffin for reimbursement for money you

(Testimony of Arthur Oszman.)

claimed they owed you while you were on the trip to Minneapolis?

A. Those things are normally taken up with your immediate superior and my immediate superior was the Traffic Manager, B. B. Edwards. Those matters were discussed at staff meeting, I believe, on a weekly basis in the Anchorage headquarters.

Q. Why did you not make a written demand on Mr. Griffin during the period you were District Manager of the Seattle office and prior to March 13 of 1947?

A. For the same reasons that I assumed the information was on file in the Treasury Department and to verbally contact my superior, who as B. B. Edwards, also went as far as bringing it to the attention of Mr. Hoppin on two or three occasions, and he suggested that I again submit my claims in entirety but that I should not be too impatient as he had been for years an employee of the government and that he was required to finish his trips and was never reimbursed for periods of five to seven or nine months following those trips, and he said he was going to use the same procedure on me.

Mr. Nesbett: No further questions, your Honor.

The Court: Is there any further cross-examination?

Mr. Kay: Just a couple of questions, your Honor.

Recross-Examination

By Mr. Kay:

Q. I believe you stated Mr. Bartoo was an officer of the company? A. Yes, sir.

(Testimony of Arthur Oszman.)

Q. And did you ask him verbally for reimbursement, is that correct?

A. Of my account which was in arrears, yes.

Q. Is Mr. Bartoo still employed by Alaska Airlines? A. I don't believe so.

Q. And then I believe you said you brought it up verbally again with Mr. Hoppin? A. Yes, sir.

Q. Is Mr. Hoppin still employed by the company? A. No, sir.

Q. And I believe we covered Mr. Edwards. Mr. Edwards is no longer employed by Alaska Airlines? A. I don't believe so.

Q. But no written or oral demand was made by you upon Mr. Griffin, as I understand it, until March, 1947? A. That is true.

Mr. Kay: That is all.

The Court: Have the jurors any questions? That is all, sir. Another witness may be called.

Mr. Nesbett: We rest, your Honor.

The Court: The plaintiff rests. Defendant may call a witness.

Mr. Kay: Your Honor, at this time I would like to be heard upon a motion outside of the hearing of the jury.

The Court: The jury may retire to the jury room.

(The jury retired.)

The Court: Counsel may proceed.

Mr. Kay: Your Honor, at this time I would like again to urge that the complaint in this matter be

dismissed on the grounds stated in our previous demurrer. I don't care to argue it.

The Court: The motion is denied and the jury may be recalled.

Mr. Kay: I would like to make one further motion.

The Court: Pardon me.

Mr. Kay: One further motion would be that the case be dismissed on the grounds that the plaintiff has not made a case—a *prima facie* case.

The Court: The motion will be denied and exceptions will be noted in each [123] instance; and the jury may be recalled.

(The jury was recalled.)

The Court: Without objection the record will show all members of the jury present. The defendant may call a witness.

JOSEPH E. GRIFFIN

being first duly sworn, testified for and in behalf of the defendant as follows:

Direct Examination

By Mr. Kay:

Q. Mr. Griffin, will you state your name, please?

A. Joseph E. Griffin.

Q. Mr. Griffin, will you speak up now, so all the jurymen and myself can hear you? Mr. Griffin, where do you live?

A. Anchorage, Alaska; 818 K Street.

Q. How long have you been in Alaska, Mr. Griffin? A. About two years and four months.

(Testimony of Joseph E. Griffin.)

Q. Are you employed at the present time, Mr. Griffin? A. Yes, I am, by Alaska Airlines.

Q. And how long have you been employed by Alaska Airlines? A. Since February 4, 1946.

Q. February 4, 1946? And what is your capacity with Alaska Airlines, Mr. Griffin?

A. I am Treasurer of Alaska Airlines.

Q. Have you been in that capacity—or what has been your capacity since the date of your employment?

A. I was hired as Comptroller of the company and then in December of '46 I was elected Treasurer of the company.

Q. Do you have any profession?

A. Yes, I am a certified public accountant.

Q. Well, now, Mr. Griffin, when you were employed as Treasurer of the company will you state to the jury, please, what you did to familiarize yourself with the duties of your job? [124]

A. I stopped at the Chicago office of Price Waterhouse and Company, who had just conducted an audit of Alaska Airlines for the three years and nine months period ending July 1, 1945, and I reviewed in that Chicago office, after my discharge from the Army and on my way up here, the record they had compiled in making that three years and nine months audit for the purpose of the Security and Exchange Commission in Philadelphia.

Q. What else did you do, if anything?

A. When I arrived at Alaska Airlines I went into some detail on conducting my own audit into the

(Testimony of Joseph E. Griffin.)

books and records of Alaska Airlines to familiarize myself with their business.

The Court: Speak a little more slowly and a bit louder, Mr. Griffin.

Mr. Kay: The acoustics in here are a bit poor, Mr. Griffin.

The Court: If you speak slowly we will be able to understand you more clearly.

The Witness: Yes, sir.

Mr. Kay: Now, Mr. Griffin, in the course of that examination of the books and records of the company did you familiarize yourself with the matter of policy on various matters? A. Yes, I did, sir.

Q. Mr. Griffin, will you state what the policy of the Alaska Airlines is at the present time with regard to payment of transportation for new employees of the company?

A. When a new employee is hired some place on the outside for the specific purpose of coming to Alaska to work for Alaska Airlines, he puts in an expense account upon his arrival in Anchorage or one of our other branches in Alaska, and forwards them to the Treasury Department. This must be accompanied by receipts for his transportation, and this applies to transportation costs for himself only. That expense account is then filed in the personnel file of the employee in question. At the end of six months time one-half of those expenses are refunded to the employee, and at the end of one year's continual employment the balance of the expense account is refunded to the employee. [125]

(Testimony of Joseph E. Griffin.)

Q. Now, Mr. Griffin, when, if you know, was that policy placed in effect at Alaska Airlines?

A. It was placed into effect about the spring of 1945 when T. H. Law became president.

Q. Do you know of your own knowledge whether that policy was in effect prior to that time?

Mr. Nesbett: I object, your Honor; the witness is incompetent to answer.

The Court: Objection is sustained.

Mr. Kay: Mr. Griffin, I believe that you testified that you had examined audit of affairs of Alaska Airlines made by Price Waterhouse Company?

A. That is correct.

Q. That thereafter you carefully examined the books and records here in the Territory?

A. That is correct.

Q. Now, will you state whether or not—at approximately what time was that examination made, Mr. Griffin?

A. During the months of February and March, 1946.

Q. Now, Mr. Griffin, will you state what, if anything, you found in the Price Waterhouse audit, or in the books and records of the Alaska Airlines, concerning any account owing from Alaska Airlines to Mr. Arthur Oszman?

A. There was no account payable set up on the books for Mr. Art Oszman at that time.

Q. Was any liability shown on the audit, Mr. Oszman?

A. There was no liability whatsoever on the audit.

(Testimony of Joseph E. Griffin.)

Q. Was there any item of any kind on the books and records of the company?

A. Yes, there was. There was a recap of the petty cash fund at Juneau indicating the fund was \$26.00 short, which we wrote off to expense.

Q. That single item anything to indicate Alaska Airlines owed Mr. Oszman anything?

A. There was nothing in the records to indicate any obligation.

Q. All right. Now, Mr. Griffin, were you Comptroller and/or Treasurer [126] of the company in September of 1946? A. I was comptroller.

Q. Comptroller? Were you familiar with the fact that Mr. Art Oszman was employed by Alaska Airlines at that time? A. Yes, I was.

Q. And did you have any discussion with Mr. Oszman at that time or not, Mr. Griffin?

A. No, not at that time. I met Mr. Oszman before he went on the plane to go to Juneau for a proving flight, but that was the extent of my talking to him.

Q. Just met him? A. That is right.

Q. Will you state, please, what if anything was said by you and by Mr. Oszman on the occasion of that meeting?

A. There was nothing said. It was strictly a casual meeting.

Q. Just shook hands? A. That is right.

Q. Now, Mr. Griffin, you have heard the testimony of Mr. Oszman concerning a bill for \$181.80, Gastineau Hotel. Will you state what if anything you know concerning that?

A. Yes, I will. In December, 1945, I went from

(Testimony of Joseph E. Griffin.)

here to New York via Seattle, and while in Seattle I was in the office of Alaska Airlines and spoke with Mr. Oszman, and later on that day we went to the Washington Athletic Club, and I told him that he had been advanced in cash by Mr. Brockus of our Seattle office \$150 which was an advance on an expense account to be submitted. I told him, furthermore, that he had submitted his expense accounts and had reimbursed himself out of petty cash, or caused himself to be reimbursed out of petty cash, without the prior approval of his department head or without following company procedures in which all expense accounts are made in the Anchorage office—centralized—and I said unless that \$150 was accounted for, and I didn't see how it could, since his expense accounts had covered all periods of time in question [127] since he had been reemployed, that I was, therefore, going to make a payroll deduction of \$150 when I returned from New York, and that I did. To the best of my knowledge that \$150 was never accounted for and it was shortly after that conversation that I received the hotel bill—not a bill, an expense account—stating that there was an amount of approximately \$181 paid to the Gastineau Hotel, which I imagined was to be applied against the \$150 advance. That was in January, 1947, and since we had already paid all of Mr. Oszman's expenses from September, '46, to that time I saw no justification for this hotel bill except as company policy dictates that on transfer to a new base—

Mr. Nesbett: I object, your Honor, to any further statement.

(Testimony of Joseph E. Griffin.)

The Court: Objection is sustained on company policy.

Mr. Kay: Do you know, Mr. Griffin, the circumstances surrounding Mr. Oszman's reemployment by Alaska Airlines? A. Yes, I do.

Q. Where, if you know, was Mr. Oszman to be based at that time?

A. In Juneau as District Traffic Manager.

Q. Will you state whether or not as District Traffic Manager based in Juneau he would be entitled to his hotel expenses?

A. Not after the first ten days of residence in Juneau, and strictly for himself only.

Q. Now, Mr. Griffin, you heard Mr. Oszman testify concerning the expense accounts during the months of October, November, December, I believe, 1946. Where was Mr. Oszman stationed at that time, Mr. Griffin, if you know?

A. Mr. Oszman was stationed in Juneau and was instructed by Mr. Edwards to proceed to the Minneapolis area to make a survey at which time he returned to Juneau and then was transferred to Seattle as District Traffic Manager, I think around the end of November or the beginning of December, 1946.

Q. Now, so far as you know, Mr. Griffin, were Mr. Oszman's expense accounts paid during November or December?

A. They were paid by himself out of petty cash.

Q. Will you explain what you mean by that, Mr. Griffin?

A. That when the regular petty cash come in from the station I would find attached to it an ex-

(Testimony of Joseph E. Griffin.)

pense account, also listed as a disbursement, expenses of A. J. Oszman for the period, and he reimbursed himself very promptly for his expense accounts as he put them in, and we instructed him he was to send his expense accounts to Anchorage for approval and Anchorage would issue a check for them, but this was not done until the end of January, 1947.

Q. You say at the end of January in 1947 there was a change in that situation?

A. There was.

Q. Will you state what that change was?

A. Yes. I made Mr. J. L. Brockus personally responsible for petty cash in Seattle. I informed him that if any more expense accounts were paid out of the petty cash box I personally would fire him.

Q. Now, Mr. Griffin, expense accounts submitted by Mr. Oszman for, I believe, March and February. I am going to show you Plaintiff's Exhibits 15 and 16, Mr. Griffin, and ask you whether or not you received expense accounts in substantially that amount from Mr. Oszman? A. Yes, we did.

Q. Now, were those expense accounts paid, Mr. Griffin? A. No, they weren't.

Q. Mr. Griffin, will you state, please, to the jury what the situation was in regard to those expense accounts?

A. Yes. In the—first of all, I could not secure approval from Mr. Oszman's superior since he said they were out of line, and in the second place I knew at that time that Mr. Oszman was being let go so I withheld payment until such time as we could straighten out his whole account.

(Testimony of Joseph E. Griffin.)

Q. Now, Mr. Griffin, will you please state whether or not you feel that any of those two statements should be paid by— A. Yes—

Mr. Nesbett: I object to what Mr. Griffin feels.
The Court: Objection is sustained.

Mr. Kay: Will you state whether or not you would approve, as the Comptroller of the Alaska Airlines, a part of those expense accounts?

A. Yes, I would.

Mr. Nesbett: Object again, your Honor—

The Court: Objection is overruled. You may answer.

The Witness: Yes, I would pay them because part of them are apparently legitimate expenses and we would pay it.

Mr. Kay: Now, Mr. Griffin, will you state to the jury, please, when Mr. Oszman was terminated with Alaska Airlines?

A. Mr. Oszman was notified of his termination verbally around the end of February or the beginning of March, 1947, and this was then put in writing on March 8, 1947, and on March 11 I wrote to the Territory of Juneau with a form usually used when an employee terminates advising them of the fact that he had terminated his employeeship.

The Court: I did not understand you. Even the reporter did not understand.

The Witness: At the end of February or the beginning of March, Mr. Oszman was notified verbally that he would be terminated from the employ of Alaska Airlines and that he would be given several weeks' notice, and was informed in writing on March

(Testimony of Joseph E. Griffin.)

8, 1947, by Mr. W. R. Lynn, and on March 11, 1947, I sent the usual form to Juneau which is required when an employee becomes terminated.

Mr. Kay: Now, Mr. Griffin, will you state whether or not you thereafter received anything from Mr. Oszman?

A. Yes, I did. I received two memos, each dated March 13, 1947, in which he claimed his transportation from Minneapolis to Fairbanks in 1944, in which he claimed a very large amount as reimbursement at Juneau in the years 1944 and 1945, in which he claimed reimbursement for the transportation of his wife from Anchorage to Seattle in September, 1946—and that's about it.

Q. Now, prior to that time, Mr. Griffin, will you state whether or not you had had—between the time of Mr. Oszman's employment in September of '46 and [130] his termination in March, did you have any occasion to see or meet Mr. Oszman?

A. In Seattle that time I passed through on my way to New York I was with him for several hours.

Q. Will you state what the circumstances of that meeting were, Mr. Griffin?

A. Yes, I just dropped in—I was waiting for an airplane—to see how things were going. We repaired to the Washington Athletic Club and had a couple of drinks there, and at that time Mr. Oszman brought up to me the point that he was due for his salary increase, which we had apparently muffed, and I told him he would get his retroactive increase as soon as we could possibly do it; and I think on the next payroll he got a retroactive increase in pay.

(Testimony of Joseph E. Griffin.)

Q. Was anything said during that meeting, Mr. Griffin, concerning any of the claims on this suit?

A. No, there was not.

Q. Now, had you received any notice—any information of any kind concerning any claim of Mr. Oszman prior to the letters of March 13?

A. No, I did not.

Mr. Kay: I believe that is all.

The Court: Court will stand in recess until 3:16.

(Whereupon recess was had at 3:11 o'clock p.m.)

After Recess

The Court: Without objection the record will show all members of the jury present.

Counsel may proceed with examination.

Mr. Kay: I just have two more questions, your Honor, I would like to ask. Mr. Griffin, do you know Frank Pollack? A. Yes, I do.

Q. Do you know, will you state if you know, where Mr. Pollack is at the present time?

A. He is in Seattle.

Q. Mr. Griffin, do you know Mr. L. V. Castner?

A. Yes, I do.

Q. Do you know where Mr. Castner is at the present time?

A. Unless he has come in today he is in Seattle. The Court: Counsel for the plaintiff may examine.

(Testimony of Joseph E. Griffin.)

Cross-Examination

By Mr. Nesbett:

Q. Mr. Griffin, you are a certified public accountant, I believe? A. Yes, sir.

Q. And did you have occasion to examine and change the Alaska Airlines books after you arrived in Seattle and took over your duties—

A. After I arrived in Seattle?

Q. Pardon me, Anchorage—and took over your duties? A. Yes, I did.

Q. How did you find the books, generally, good condition? A. No, they were not.

Q. Were they in terrible condition?

A. They had been, but they had been brought up to date as a result of the audit by Price Waterhouse Company.

Q. What period did that cover?

A. Three years, nine months, ending July 31, 1945.

Q. After the audit in 1945, from that time onward, the books were in good shape, is that your testimony?

A. We know what goes through them.

The Court: What is the answer, sir?

The Witness: We know what goes through them.

Mr. Nesbett: Who is your immediate superior, Mr. Griffin, as treasurer of the company?

A. Mr. Wooten, president of the company.

Q. And during the time Mr. Ben Edwards was General Traffic Manager did you have any authority over Mr. Edwards? [132] A. Yes, sir.

Q. What did that authority consist of?

(Testimony of Joseph E. Griffin.)

A. All matters relating to funds of the company.

Q. And did Mr. Edwards take orders from you when it came to funds?

A. He had to have all expense accounts by himself and his department approved before payment.

Q. Approved by you?

A. By Mr. Hoppin and myself.

Q. And did you have occasion as Treasurer to disapprove any of Mr. Edwards' accounts?

A. Not very many—a couple of miscellaneous items.

Q. And if the account was disapproved by you did that eliminate any chance of payment of the account through company funds?

A. It took quite a struggle.

Q. Well, as a matter of fact, isn't it almost impossible to get the money if you disapprove the payment?

A. No, it is not impossible. I can be overruled by the President.

Q. Who was President when you came here to assume your duties, Mr. Griffin?

A. Marshall Hoppin.

Q. He could have overruled you?

A. Yes, sir.

Q. No one else would have overruled you on a decision of that nature?

A. Mr. Marshall, the Chairman of the Board, could overrule me.

Q. Mr. Marshall stayed in New York a good bit, did he not? A. That's right.

(Testimony of Joseph E. Griffin.)

Q. Did you ever have occasion to refuse payment of any accounts to Mr. Lynn?

A. Only once that I remember, and that was in regard to car mileage.

Q. Did the President overrule him? Overrule your decision? A. No, he didn't.

Q. Did the President overrule your decision with respect to Mr. Edwards? A. No. [133]

Q. In any of the situations have you ever been overruled by the President? A. Yes.

Q. Have you? Mr. Hoppin? A. Yes.

Q. His accounts?

A. I never questioned his accounts.

Q. When was Mr. Hoppin terminated, Mr. Griffin, do you know?

A. He ceased to be President of the company on June 30, 1947, when Mr. Wooten became President.

Q. And do you know when Mr. Edwards was terminated?

A. In December, 1946, around 15 December, 1946.

Q. When was Mr. Lynn terminated?

A. It was a couple of months before Mr. Hoppin. I'd say around April, 1947.

Q. Mr. Griffin, when you received these memoranda that you testified to, dated around March 13, from Mr. Oszman, demanding reimbursement for the Gastineau Hotel bill and his transportation to Fairbanks from Minneapolis—

A. The Gastineau Hotel was not included in the March 13th—I got it prior to that.

Q. You got it prior to March 13? A. Yes.

Q. Well, when you received Mr. Oszman's de-

(Testimony of Joseph E. Griffin.)

mand for reimbursement on all those sums did you disapprove? A. Immediately.

Q. And did you notify Mr. Oszman?

A. Yes, I did.

Q. And did you first approach the President on the matter to see if he would approve them?

A. They were shown to the President of the company at that time, yes.

Q. Who was President then?

A. Mr. Hoppin.

Q. And you disapproved, is that correct? [134]

A. Yes.

Q. And notified Mr. Oszman? A. Yes.

Q. And the only way that the money could have ever been obtained by Mr. Oszman would be to go direct to Mr. Hoppin and get him to override your decision, is that correct? A. Yes, sir.

Q. And that has only happened on one or two occasions, is that correct?

A. Relative to expense accounts, why, yes, I have only been overruled on a couple of occasions.

Q. As a matter of fact, when they brought you out here, a certified public accountant, wide experience, and after making an examination of the company audit, didn't they say on this matter of expense accounts, "we want to be tough; we are going to give you a lot of authority; what you say goes"?

A. No, sir, that is not correct.

Q. You were given a lot of authority, were you not?

A. Not until Mr. Wooten became President.

Q. But you had the authority to disapprove even

(Testimony of Joseph E. Griffin.)

the General Traffic Manager's decision in respect to funds before Mr. Wooten became President?

A. That is a normal function of the Treasury Department.

Q. You could overrule any of the officers except the President? A. That is correct.

Q. In the normal function of an airline operating like Alaska did up here, would you say that's a normal function of the Treasurer?

A. Are you speaking of our airline or all airlines?

Q. You said it is a normal function of any similar organization?

A. Of any Treasury Department it is a normal function to audit expense accounts and keep them as low as possible.

Q. And disapprove of anything except those items allowed by the President?

A. Anything that is unreasonable. [135]

Q. That would leave a man in Mr. Oszman's position one of two choices: to sue for it or go to the President with his hat in his hand, would it not?

A. That is correct.

Q. Well, what is the correct procedure for Mr. Oszman to have followed?

A. To put in his expense accounts, have them approved—and we allow traffic men a bit of latitude depending upon the results they achieve.

Q. But you disapproved all his requests for reimbursement, did you not?

A. No, I did not. He was paid during the course—

(Testimony of Joseph E. Griffin.)

Q. Just a minute: To save a lot of time, I mean the accounts that are in question here.

A. Are you speaking of the amounts due back in 1944 and the amounts due in June on in 1945?

Q. Amounts—— A. Specifically?

Q. The amounts we claim are due and are suing for here at the present time.

A. If we can examine them one by one I can say what we approve and what we disapprove.

Q. Did you ever tell Mr. Oszman you should go over them one by one and find out what the company was liable for in your opinion?

A. No, I didn't.

Q. As Treasurer, wouldn't you ordinarily offer to do that in order to get a preliminary estimate?

A. Not when I am sued so fast I didn't even see the man.

Q. Well, when you denied his request for reimbursement didn't you tell him it company would be glad to compromise?

A. The company will never be glad to compromise a matter of several years' back on which no details or support has ever been given. It will be glad to compromise what it knows about and what it feels itself liable for.

Q. Well, is it your testimony that Mr. Oszman did not turn in detailed sheets for the recap of monthly expenses that is in evidence? [136]

A. I don't think I am qualified to state whether he turned them in or not. I know that we don't have them, and I know that the passenger receipts for transportation in 1944 were not submitted to me

(Testimony of Joseph E. Griffin.)

until 1947, so I don't see how the original passenger receipts could have been submitted properly at that time.

Q. Did you have occasion to ask Mr. Edwards if he had seen those detailed sheets?

A. No, I didn't. There was never any conversation with me about any of Oszman's expense accounts prior to the time of his rehiring. I knew nothing of any claims.

Q. Did you ask Mr. Edwards if those detailed sheets existed?

A. I couldn't ask him if he knew they were in existence. I didn't know they were in existence and I didn't know there was any claim.

Q. You didn't offer to get together with Mr. Oszman and iron the matter out?

A. I have nothing to get together on. What period are you talking about getting together with him?

Q. On any of these claims we claim are due.

A. He was at that time terminated and had sued the company. I am not going to get together with a man who sues the company on five minutes' notice when he is terminated.

Q. Mr. Griffin, when did you give Mr. Oszman his last pay check, do you recall?

A. I don't know when I gave him the last pay check. I know he was paid through March 24, 1947, plus vacation pay accrued.

Q. Isn't it a fact that his last pay check was held up for a period of over three months?

A. I can't state. I don't think it was held up

(Testimony of Joseph E. Griffin.)

for three months. I know it was held up slightly—what period of time I don't remember.

Q. Well now, to refresh your memory, isn't it a fact that the pay check was [137] held up for three months and that Mr. Oszman threatened suit as a result of failure to receive his last pay check?

A. I knew nothing about whether he threatened to sue for his last pay check.

Q. You knew it was held up?

A. Yes, there was some delay upon his termination. I have a letter here from the Department of Labor dated March 28. It says: "Your attention is called to our telephone conversation of March 25 regarding the non-payment of wages to Art Oszman for services terminating as of February 24." Well, that February 24 was in error. It was supposed to be March 24, but on March 28 we had a statement from the Department of Labor and Industry, so apparently he didn't waste much time going down and complaining about it.

Mr. Nesbett: No further questions, your Honor.

The Court: Any further direct examination?

Mr. Kay: I believe not, your Honor.

The Court: Have the jurors any question? That is all, Mr. Griffin. Another witness may be called.

Mr. Kay: No further witnesses, your Honor. Defense rests.

The Court: Is there any rebuttal testimony?

Mr. Nesbett: Yes, your Honor, but I would like about five minutes to talk with Mr. Oszman.

The Court: Well, we will take a little longer re-

cess and then perhaps we can go through and finish up the case. Court will stand in recess until 3:40.

(Whereupon recess was had at 3:32 o'clock p.m.)

After Recess

The Court: Plaintiff may call a witness in rebuttal.

Mr. Nesbett: Mr. Oszman again, please.

The Court: Mr. Oszman may resume the stand.

ARTHUR OSZMAN

heretofore duly sworn, resumed the stand and further testified in his own behalf as follows: [138]

Direct Examination

By Mr. Nesbett:

Q. Mr. Oszman, will you state in greater detail to the Court and jury where and when you delivered those detailed expenses set out in the recap sheets?

A. To the main office of the Treasury Department at Merrill Field—the Treasurer's office. Mr. Hedman at that time was treasurer.

Q. Alaska Airlines?

A. That is true.

Q. When did that occur?

A. In the period between May 15 and June 20.

Q. Was anyone present with you at the time you delivered those detailed sheets?

A. Yes, Mr. T. N. Law, the President of the company. We had just previous to that discussed

(Testimony of Arthur Oszman.)

them in his office. He acknowledged the obligations.

Q. Were any instructions given to Mr. Hedman by Mr. Law at that time?

A. They were. He asked Mr. Hedman to give it his immediate attention as they were in his opinion long overdue and would appreciate having mine balanced out.

Q. Now, were those the last detailed sheets you had—were those your copies? A. They were.

Q. Were those detailed sheets, I will ask you, similar in nature to the two detailed sheets you submitted for February and March in Seattle?

A. Yes, very much in detail, itemized each expenditure separately on the days which they occurred.

Q. Now, Mr. Oszman, after you had received notice of your termination in March of 1947, why did you write those memos to Mr. Griffin requesting reimbursement on these old accounts?

A. Because on the termination day, March 24, my payroll check had not arrived, and Mr. Hoppin was in the office—he couldn't understand the delay as it was so written that it would be on that date, along with the final check. [139] I believe he wired or had attempted to long distance, or place a long distance call to the Treasury Department, to Mr. Griffin, to get an answer or a reason for a delay. And in the meantime, I had again approached him the expenses covering the '44-'45 period, and he admitted that it was a deplorable condition and sug-

(Testimony of Arthur Oszman.)

gested that I should submit them again at my earliest convenience and that he, after understanding it as well as he did, would go over it with Mr. Griffin upon his return to Anchorage.

Mr. Nesbett: No further questions, your Honor.

The Court: Counsel for the defendant may examine.

Cross-Examination

By Mr. Kay:

Q. Mr. Oszman, you say you delivered these sheets to Mr. Hedman at Merrill Field?

A. Yes.

Q. About when was that, Mr. Oszman?

A. I believe it was between May 15 and June 20 of 1945.

Q. Between May and June of 1945? 1945?

A. I am quite sure, yes.

Q. '45? A. '45.

Q. Well, that would be before some of that had been done, wouldn't it, Mr. Oszman? I am sorry, I am not sure of the dates on the recap sheet.

The Court: Counsel may take the exhibits.

(Mr. Kay took exhibits from the Clerk.)

Mr. Kay: Well, that was before—just prior to your first termination with the company, is that correct?

A. As I said, I had been offered it on a permanent basis but had made previous commitments in Juneau in the other field of endeavor in Kodiak. Therefore, I was limited on my stay in Anchorage. But the President of the company, Ted

(Testimony of Arthur Oszman.)

Law, pleaded with me to continue on as long as I possibly could until he could [140] get a replacement from the States, and in that course of time I had gone over and submitted those reports to his Treasurer.

Q. And you submitted those sometime prior, then, to June 30, '45, when you terminated?

A. Yes, I say, it was prior to June 20.

Q. Now, Mr. Nesbett asked you why you wrote those memos to Mr. Griffin on March 13, and I wasn't clear about your testimony. It seemed to be something about Mr. Hoppin—a conversation with Mr. Hoppin at the time of your termination on March 24.

A. Mr. Hoppin was in Seattle as late as, I believe, as March 6, and at that time—between the fourth and sixth of March—those had been discussed again because I was not successful with any previous department head in the Treasury Department, and my only recourse was the President of the company.

Q. So you discussed those again with Mr. Hoppin? A. Yes, sir.

Q. About March 6? A. Yes, sir.

Q. 1947? A. Yes, sir.

Q. Do you know where Mr. Hoppin is now, Mr. Oszman? A. I believe he is in Anchorage.

Q. You believe he is in town?

A. He had been three or four days ago.

Mr. Kay: That is all.

(Testimony of Arthur Oszman.)

The Court: Has counsel any further examination?

Mr. Nesbett: I have.

Redirect Examination

By Mr. Nesbett:

Q. After your termination, Mr. Oszman, in Seattle, where did you go?

A. I returned immediately to Anchorage, Alaska. [141]

Q. Mr. Oszman, did you have occasion to request Mr. Griffin to go over your accounts with you and try to work something out after your termination?

A. Yes, because I had been employed by Anchorage Cold Storage as a salesman and had an opportunity to go out to Alaska Airlines to contact Mr. Griffin directly on accounts due Anchorage Cold Storage and, therefore, I served a double purpose by attempting collection on mine as well and was not successful.

Q. What did Mr. Griffin say to you on those occasions when you requested him to go over them?

A. I was seldom received in his office. He always passed word through his secretary he was much too busy and I should come back later.

Q. Did he make any statements about the earlier accounts?

A. No, he was much too busy at the time to go into anything of that nature.

Mr. Nesbett: No further questions.

The Court: That is all. Is there any further rebuttal testimony?

Mr. Nesbett: No, your Honor.

The Court: Any surrebuttal?

Mr. Kay: No, your Honor.

The Court: The next order of business is to instruct the jury upon the law. Ladies and Gentlemen of the Jury (reading):

It now becomes the duty of the Court to instruct you as to the law that will govern you in your deliberations upon and disposition of this case. When you were accepted as jurors you obligated yourselves by oath to try well and truly the matters at issue between the plaintiff and the defendant in this case, and a true verdict render according to the law and the evidence as given you on the trial. That oath means that you are not to be swayed by passion, sympathy or prejudice, but that your verdict should be the result of your careful consideration of all the evidence in the case. It is equally your duty to accept and follow the law as given to you in the instructions of the Court, even though you may think that the law should be otherwise. It is the exclusive province of the jury to determine the facts in the case, applying thereto the law as declared to you by the Court in these instructions, and your decision thereon as embodied in your verdict, when arrived at in a regular and legal manner, is final and conclusive upon the Court. Therefore, the greater ultimate [142] responsibility in the trial of the case rests upon you, because you are the triers of the facts.

[1]

Arthur J. Oszman, the plaintiff in this action, has sued the defendant, Alaska Airlines, an Alaska Corporation, claiming that the defendant is indebted to the plaintiff in the sum of \$1,840.53, by reason of expenditures made by the plaintiff for and on behalf of the defendant while the plaintiff was in performance of his duties as an employee of the defendant as stated in the plaintiff's complaint; that no part of said sum has been paid by defendant to plaintiff and that there is now due and owing from defendant to plaintiff the said sum of \$1,840.53, together with interest at the rate of six per cent per annum as claimed in said complaint.

The defendant in his answer to the plaintiff's complaint has admitted that it is a corporation organized and existing under the laws of the Territory of Alaska, and has denied all of the other allegations set out in the plaintiff's complaint.

When you retire to consider of your verdict you will take with you to the jury room the plaintiff's complaint in this action and the defendant's answer thereto, and you should there read and consider said pleadings in order to be fully informed as to the nature of the respective claims of the plaintiff and defendant.

[2]

In this case, as in all civil cases, the burden is upon the plaintiff to prove his case by a preponderance of the evidence only, and not, as in criminal cases, beyond reasonable doubt. Preponderance of evidence means the greater weight of evidence. If

the evidence in your mind is equally balanced as between the plaintiff and defendant, then the verdict should be for the defendant, because the burden is upon the plaintiff to present evidence of greater weight than that in favor of the defendant before plaintiff is entitled to recover.

[4]

The plaintiff's claim against the defendant in this action is based upon [143] what plaintiff asserts to be contracts made by him with the defendant. A contract is an agreement between two or more persons, upon sufficient consideration, to do or not to do a particular thing. In other words, to make a contract there must be an offer by one party, for a sufficient consideration, to do or not to do a particular thing, and there must be an acceptance by the other party of that offer, and this offer and acceptance must be equally binding upon both parties to the agreement. A contract may embrace more than one subject. In order to determine whether a contract or contracts were made by and between the parties to this action, you should consider all of the negotiations, conversations and dealings between the parties with respect to the subject matter of the action. It is not necessary that a contract or contracts such as are claimed to have existed in this action should be in writing, for such contracts, if they existed, may be orally as well as in writing.

[4-A]

A contract is a promise, or a set of promises, between persons for the breach of which the law gives

a remedy, or the performance of which the law recognizes as a duty. A promise in a contract must be stated in such words, either oral or written, or may be inferred wholly or partly from such conduct, as justifies one person in understanding that the other person intended to make a promise. Thus, in the present case, upon any item of his claim, the plaintiff to recover must establish by a preponderance of the evidence, as to such item, that the defendant by one or more of its duly authorized officers, agents or representatives, promised payment or reimbursements to plaintiff, either orally or in writing, or plaintiff must prove such conduct on behalf of the defendant as would justify plaintiff in understanding that reimbursement or payment was so promised. In legal view, the defendant although a corporation is a "person." A corporation must act through its officers, agents or representatives authorized so to act. [144]

[5]

If you find from a preponderance of the evidence that the material averments of plaintiff's complaint are true as to all or any of the various sums claimed by plaintiff, then your verdict should be for the plaintiff and against the defendant for such sums as you find the plaintiff justly entitled to recover from the defendant in this action, not to exceed, however, the sum of \$1,840.53, together with interest thereon as claimed in the complaint.

But if the plaintiff has failed to prove his case for any amount by a fair preponderance of the evidence, then your verdict should be for the defendant and against the plaintiff.

[5-A]

The law makes you, subject to the limitations of these instructions, the sole judges of the effect and value of evidence addressed to you.

However, your power of judging the effect of evidence is not arbitrary, but is to be exercised with legal discretion and in subordination to the rules of evidence.

You are not bound to find in conformity with the declarations of any number of witnesses which do not produce conviction in your minds, against the declarations of witnesses fewer in number, or against a presumption or other evidence satisfying your minds.

A witness wilfully false in one part of his testimony may be distrusted in others.

Testimony of the oral admissions of a party should be viewed with caution.

Evidence is to be estimated not only by its own intrinsic weight, but also according to the evidence which it is in the power of one side to produce and of the other to contradict, and therefore, if the weaker and less satisfactory evidence is offered, when it appears that stronger and more satisfactory evidence was within the power of the party, the evidence offered should be viewed with distrust.

[6]

The laws of Alaska provide that all questions of law, including the admissibility of testimony, the facts preliminary to such admission, the construction of statutes and other writings, and other rules

of evidence, are to be decided by the Court, and all discussions of law addressed to the Court; and although the jury has the power to find a general verdict, which includes questions of law as well as fact, you are not to attempt to correct by your verdict what you believe to be errors of law upon the part of the Court.

All questions of fact, other than those heretofore mentioned in these instructions, must be decided by the jury, and all evidence thereon addressed to them. Since the law places upon the Court the duty of deciding what testimony may be admitted in the trial of the case, you should not consider any testimony that may have been offered and rejected by the Court, or admitted and thereafter stricken out by the Court.

You are the sole judges of the credibility of the witnesses. In determining the credit you will give to a witness and the weight and value you will attach to his testimony, you should take into account the conduct and appearance of the witness upon the stand; the interest he has, if any, in the result of the trial; the motive he has in testifying, if any is shown; his relation to and feeling for or against any of the parties to the case; the probability or improbability of the statements of such witness; the opportunity he had to observe and be informed as to matters respecting which he gave evidence before you; and the inclination he evinced, in your judgment, to speak the truth or otherwise as to matters within his knowledge.

[7]

The law forbids quotient verdicts. A quotient verdict is arrived at by having each juror write the amount of damages or compensation to which he believes the plaintiff is entitled, adding the amounts so set down, and then dividing the total by the number of juror, usually twelve, the resulting figure being given as the verdict of the jury. Such verdicts are highly improper and [146] under no circumstances should you resort to that method of adjusting differences of opinion among yourselves.

[8]

At the close of the trial counsel have the right to argue the case to the jury. The arguments of counsel, based upon study and thought, may be, and usually are, distinctly helpful; however, it should be remembered that arguments of counsel are not evidence and cannot rightly be considered as such. It is your duty to give careful attention to the arguments of counsel, so far as the same are based upon the evidence which you have heard and the proper deductions therefrom, and the law as given to you by the Court in these instructions. But arguments of counsel, if they depart from the facts or from the law, should be disregarded. Counsel, although acting in the best of good faith, may be mistaken in their recollection of testimony given during the trial. You are the ones to finally determine what testimony was given in this case, as well as what conclusions of fact should be drawn therefrom.

[9]

You are to consider these instructions as a whole. It is impossible to cover the entire case with a single instruction, and it is not your province to single out one particular instruction and consider it to the exclusion of the other instructions.

As you have been heretofore instructed, your duty is to determine the facts from the evidence admitted in the case, and to apply to these facts the law as given to you by the Court in these instructions.

During the trial I have made no comment on the facts and expressed no opinion in regard thereto. If I have, or if you think I have, it is your duty to disregard that opinion entirely, because the responsibility for the determination of the facts in this case rests upon you, and upon you alone.

[10]

Upon retiring to the jury room you will elect one of your members foreman of the jury who will speak for you and sign the verdict unanimously agreed upon. You will take with you to the jury room these instructions, the pleadings in the [147] case, the exhibits, and two forms of verdict which have been prepared for your use.

If you find for the plaintiff and against the defendant your foreman will insert in the verdict which has been prepared for that contingency the amount which you have determine the plaintiff is justly entitled to receive, but not to exceed the sum of \$1,840.53, together with interest thereon at the rate of 6% per annum as claimed in the plain-

tiff's complaint. Your foreman will thereupon date and sign the verdict and return the same into court as your verdict.

The form of verdict not used will be destroyed by your foreman.

You will return into court with your verdict these instructions, the pleadings and the exhibits.

Dated at Anchorage, Alaska, this 28th day of May, 1948.

And I have signed as District Judge.

Counsel for both parties may now come to the bench with the court reporter and take exceptions to the instructions given and the refusal to give requested instructions.

(The following then occurred in the presence of the jury but not in hearing of the jury:)

The Court: Plaintiff's counsel may take exceptions first.

Mr. Nesbett: I have no exceptions to take to any instructions, your Honor.

The Court: Defendant's counsel?

Mr. Kay: I have no exception to any of the instructions but I would like to except to failure of the Court to give Defendant's Proposed Instructions 2, 3 and 5.

The Court: Very well. All of the proposed instructions as to the defendant will be filed in the case and as to Instructions 2, 3 and 5, the notation will be made that they are refused except as covered by instructions given and an exception is noted.

Mr. Kay: Thank you, sir.

The Court: And if counsel desire it upon appeal they may be entered in the [148] record of the court reporter at this point.

* * * *

DEFENDANT'S REQUESTED INSTRUCTIONS TO THE JURY

The Defendant respectfully requests this Honorable Court to give the following instructions in the above-entitled matter:

First Proposed Instructions

1. A Contract is a promise, or a set of promises, between parties for the breach of which the law gives a remedy, or the performance of which the law recognizes as a duty. A promise in a contract must be stated in such words either oral or written, or must be inferred wholly or partly from such conduct, as justifies the one party in understanding that the other party intended to make a promise. Thus, in the present case, the plaintiff must establish by a preponderance of the evidence as to each item of his claim, that duly authorized officials of the defendant promised him reimbursement orally or in writing, or he must establish such conduct by the defendant as would justify him in understanding that reimbursement was promised.

Based on: Restatement, Contracts, Secs. 1 and 5.

Second Proposed Instructions

2. In this case there has been conflicting testimony as to whether or not the plaintiff made

prompt demands for the payment of the amounts which he claims. You are instructed that the fact that the plaintiff may have suffered a long period of time to elapse without making demand or bringing suit for the alleged items of indebtedness for which he now sues, is susceptible of various explanations consistent with his theory of the justness of his claim, and it is for you to say whether or not the plaintiff has offered one that is satisfactory or not.

Randall's Instructions, Vol. 2, p. 1326.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.) [149]

Third Proposed Instructions

3. In this case there is conflicting testimony on the part of the plaintiff and the defendant. The credibility of the witnesses is a matter which it is within your province to determine. You are instructed that the fact that the plaintiff may have suffered a long period of time to elapse without making demand or bringing suit for the alleged items of indebtedness for which he sues, is a matter which may be considered by you in passing upon the credibility of the plaintiff.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.)

Fourth Proposed Instructions

4. You are instructed that in legal contemplation a contract is "an agreement between two or more persons, upon sufficient consideration, to do or not to do a particular thing." In other words to make a contract there must be an offer, by one party, for a sufficient consideration, to do or not to do a particular thing, and there must be an acceptance, by the other party, of that offer, and this offer and acceptance must be equally binding upon both parties to the agreement, and must be to do or not to do a particular thing. In order to determine whether there was or was not a contract between the plaintiff and defendant, you should consider all the negotiations, conversations and dealings of the parties in respect to the subject matter involved in this suit.

5. The Jury are instructed that a promise would not be implied from the fact that the plaintiff, without defendant's knowledge, performed certain services or incurred certain expenses, which were useful to the defendant, but it might be implied from the conduct of the parties. If the Jury find that the plaintiff incurred these items of expense with the expectation that the defendant would pay him for them, and the defendant had reason to know that the plaintiff was so acting with that expectation and allowed him to so act without objection, and with such conduct as might lead him to believe that he would be [150] paid for them, then the

jury might infer a promise by defendant to pay the plaintiff.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.)

Respectfully submitted,

/s/ WENDELL P. KAY,

Of Attorneys for Defendant.

* * * *

The Court: Counsel for the plaintiff may make opening argument to the jury. Do counsel wish their arguments reported?

Mr. Nesbett: We waive reporting.

Mr. Kay: We waive, your Honor.

The Court: Counsel waive reporting and the reporter will be excused until recalled.

(The reporter was excused at 4:53 o'clock

pm. and recalled at 5:35 o'clock p.m.)

The Court: Counsel have stipulated in open court that the jury may return a sealed verdict.

(Envelope for a sealed verdict was given the jury; W. B. Healy and George W. Parks were duly sworn as bailiffs in charge of the jurors; and the jury retired to consider of its verdict.)

(At 10:00 o'clock a.m. of Saturday, May 29, 1948, the jury returned the following verdict:)

VERDICT

We, the jury, duly selected, impaneled and sworn to try the above-entitled cause, do find for the

plaintiff and against the defendant, and find that the plaintiff is entitled to recover of and from the defendant the sum of \$1,840.53, together with interest thereon at the rate of 6% per annum as claimed in the plaintiff's complaint.

Dated at Anchorage, Alaska, this 28th day of May, 1948.

/s/ M. B. AMES,
Foreman. [151]

(The verdict was ordered received and filed and entered and the jurors were discharged from service in the case.)

* * * *

United States of America,
Territory of Alaska—ss.

I, Ruth Haley, of Anchorage, Alaska, hereby certify:

That I am the official court reporter in the District Court for the Territory of Alaska, Third Division; that I attended the trial of the cause entitled Arthur J. Oszman, Plaintiff, v. Alaska Airlines, Defendant, No. A-4586, at Anchorage, Alaska, on May 27, 28 and 29, 1948, and recorded by means of machine shorthand the testimony given and proceedings had; that I thereafter transcribed said shorthand, and the foregoing pages, numbered 1 to 184, inclusive, comprise a full, true and correct statement and transcript of such testimony and proceedings, and the original and one carbon

copy have this day been delivered to Mr. Wendell Kay of Counsel for the defendant.

Dated at Anchorage, Alaska, this 9th day of November, 1948.

/s/ RUTH HALEY,
Court Reporter. [152]

During said proceedings, on May 28, 1948, and prior to the jury receiving the case for its deliberation and verdict, defendant moved that the cause be dismissed on the grounds stated in the Demurrer, and moved that the case be dismissed on grounds that the plaintiff had not proved a *prima facie* case, wherein the following proceedings were had:

“The Court: The plaintiff rests. Defendant may call a witness.

Mr. Kay: Your Honor, at this time I would like to be heard upon a motion outside of the hearing of the jury.

The Court: The jury may retire to the jury room.

(The jury retired.)

The Court: Counsel may proceed.

Mr. Kay: Your Honor, at this time I would like again to urge that the complaint in this matter be dismissed on the grounds stated in our previous demurrer. I don't care to argue it.

The Court: The motion is denied and the jury may be recalled.

Mr. Kay: I would like to make one further motion.

The Court: Pardon me.

Mr. Kay: On further motion would be that the case be dismissed on the grounds the plaintiff has not made a case—a *prima facie* case.

The Court: The motion will be denied and exceptions will be noted in each instance; and the jury may be recalled."

The Minute Order denying these motions of the defendant reads as follows:

TRIAL BY JURY CONTINUED

"No. A-4586

Now came the Trial Jury who, on being called, each answered to his or her name, came the respective parties, came also the respective counsel as heretofore and the trial of Cause No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines, an Alaskan Corporation, defendant, was resumed.

Arthur Oszman, heretofore, duly sworn, resumed the witness stand for further testimony for and in his own behalf.

The plaintiff rests.

At this time Wendell P. Kay, for and in behalf of the defendant, moves the Jury be excused pending argument on points of law.

At this time, Wendell P. Kay, for and in behalf of the defendant, moves the Court that cause be dismissed on grounds stated in previous demur-

rer; motion denied; and further moves that cause be dismissed on grounds that plaintiff has failed to establish a case on the face of the evidence; motion denied and trial jury recalled. [153]

Joseph E. Griffin, being first duly sworn, testified for and in his own behalf.

At 3:10 o'clock p.m. Court duly admonished the Trial Jury and continued cause of 3:16 o'clock p.m."

Thereafter, the Court read his instructions to the trial jury. Following the instructions, the following proceedings were had:

"Counsel for both parties may now come to the bench with the court reporter and take exceptions to the instructions given and the refusal to give requested instructions.

(The following then occurred in the presence of the jury but not in hearing of the jury:)

The Court: Plaintiff's counsel may take exceptions first.

Mr. Nesbett: I have no exceptions to take to any instructions, your Honor.

The Court: Defendant's counsel?

Mr. Kay: I have no exceptions to any of the instructions, but I would like to except to failure of the Court to give Defendant's Proposed Instructions 2, 3 and 5.

The Court: Very well. All of the proposed instructions as to the defendant will be filed in the case and as to Instructions 2, 3 and 5, the notation will be made that they are refused except as cov-

ered by instructions given and an exception is noted.

Mr. Kay: Thank you, sir.

The Court: And if counsel desires it upon appeal they may be entered in the record of the court reporter at this point."

The defendant's proposed Instructions 2, 3 and 5, which were refused by the Court, were as follows:

"Second Proposed Instructions

2. In this case there has been conflicting testimony as to whether or not the plaintiff made prompt demands for the payment of the amounts which he claims. You are instructed that the fact that the plaintiff may have suffered a long period of time to elapse without making demand or bringing suit for the alleged items of indebtedness for which he now sues, is susceptible of various explanations consistent with his theory of the justness of his claim, and it is for you to say whether or not the plaintiff has offered one that is satisfactory or not.

Randall's Instructions, Vol. 2, p. 1326.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.)

Third Proposed Instructions

3. In this case there is conflicting testimony on the part of the plaintiff and the defendant. The credibility of the witnesses [154] is a matter which it is within your province to determine. You are

instructed that the fact that the plaintiff may have suffered a long period of time to elapse without making demand or bringing suit for the alleged items of indebtedness for which he sues, is a matter which may be considered by you in passing upon the credibility of the plaintiff.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.)”

“Fifth Proposed Instructions

5. The Jury are instructed that a promise would not be implied from the fact that the plaintiff, without defendant's knowledge, performed certain services or incurred certain expenses, which were useful to the defendant, but it might be implied from the conduct of the parties. If the Jury find that the plaintiff incurred these items of expense with the expectation that the defendant would pay him for them, and the defendant had reason to know that the plaintiff was so acting with that expectation and allowed him to so act without objection, and with such conduct as might lead him to believe that he would be paid for them, then the jury might infer a promise by defendant to pay the plaintiff.

(Refused except as covered by instructions given. Exception noted. Anthony J. Dimond, District Judge.)”

Thereafter, defendant made its motion for a new trial, said motion reading as follows:

“MOTION FOR A NEW TRIAL

Comes now the defendant above named and moves this honorable court for an order setting aside and vacating the verdict and judgment of the jury heretofore rendered and entered in favor of the plaintiff and against the defendant in the above-entitled action, and feeling aggrieved by such verdict and judgment moves that a new trial of said action be granted to said defendant for the following causes alleged by defendant as material affecting its substantial rights and rulings of the court which were prejudicial to its substantial rights, to-wit:

Errors in law occurring at the trial and excepted to by the defendant.

1. The court erred in overruling the respective demurrers of defendant to the complaint of plaintiff on file herein.

2. The court erred in denying defendant's motion at the close of plaintiff's case to grant a nonsuit on the ground that plaintiff had failed to prove a case as laid in his complaint.

3. The court erred in failing to instruct the jury as requested by the Defendant in Defendant's proposed instructions 2, 3 and 5. [155]

Insufficiency of the evidence to justify the verdict and judgment.

Wherefore, defendant moves said court to grant a new trial in the above-entitled action.

Dated this 1st day of June, 1948.

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/s/ WENDELL P. KAY,
Attorneys for Defendant.”

And thereafter, the Court made and entered its order denying defendant's motion for a new trial, which order reads as follows:

“No. A-4586

HEARING ON MOTION FOR NEW TRIAL

Now at this time hearing on motion for new trial in case No. A-4586, entitled Arthur J. Oszman, plaintiff, versus Alaska Airlines, an Alaskan corporation, defendant, came on regularly before the Court, the plaintiff not being present but represented by Buell A. Nesbett, of his counsel, the defendant not being present, but represented by Wendell P. Kay, of its counsel. The following proceedings were had, to-wit:

Argument to the Court was had by Wendell P. Kay, for and in behalf of the defendant.

Whereupon the Court having heard the argument of counsel and being fully and duly advised in the premises, denied motion for new trial.”

Thereafter, on the 4th day of October, 1948, the term of the Court was extended to and including the 13th day of November, 1948, within which to present, settle and allow the bill of exceptions, and perfect the bill of appeal of the defendant in said action. Said order was signed and filed on the 4th day of October, 1948. Thereafter, said Court by its order duly given, made and filed on the 4th day of October, 1948, extending the time for filing of the record and docketing said action in the U. S. Court of Appeals to and including the 13th day of November, 1948.

Thereafter, and on November 12, 1948, the time of the defendant to file its proposed bill of exceptions in said action, and filing and docketing the case in

the U. S. Circuit Court of Appeals was, by an order of that date, extended to and including the 1st day of December, 1948.

And thereafter, and on the 1st day of December, 1948, the term of said Court for the purpose of presentation, settlement and allowance of the bill of exceptions herein was extended to and including the 31st day of December, 1948; [156] and by order made and entered on November 30, 1948, the time of the defendant to file the record and docket the case in the U. S. Circuit Court of Appeals, was extended to and including the 31st day of December, 1948.

Thereafter, by order of the Court made and entered on December 31, 1948, the terms of the Court was extended for the purpose of presentation, settlement and allowance of the bill of exceptions and to perfect the appeal of the defendant was extended to and including the 1st day of February, 1949. Thereafter on December 31, 1948, and by its order, signed and filed that day, the time for filing the record and docketing this cause in the U. S. Court of Appeals for the Ninth Circuit was extended to and including the 1st day of February, 1949. Thereafter on the 1st day of February, 1949, and by its order, signed and filed that day, the time for filing the record and docketing this cause in the U. S. Court of Appeals for the Ninth Circuit was extended to and including the 1st day of March, 1949. Thereafter on the 1st day of March, 1949, and by its order, signed and filed that day, the time for filing the record and docketing this cause in the U. S. Circuit Court of Appeals for the Ninth Circuit was extended to and including the 2nd day of April, 1949.

The said defendant, Alaska Airlines, an Alaskan corporation, tenders and presents the foregoing as its bill of exceptions in said cause and prays that the same be settled, allowed, signed and sealed, and made a part of the record in said cause by this Court pursuant to law in such cases.

Dated at Anchorage, Alaska, this 27th day of January, 1949.

/s/ WENDELL P. KAY,
Attorney for Defendant, Alaska Airlines.

[Endorsed]: Filed March 17, 1949. [157]

[Title of District Court and Cause.]

STIPULATION SETTLING BILL
OF EXCEPTIONS

It is hereby stipulated and agreed by and between counsel for plaintiff and defendant above-named, that the foregoing statement of the testimony introduced at the trial of the above-entitled action, together with the motions therein referred to and rulings thereon, is a true, correct and accurate statement thereof.

It is further Stipulated and Agreed, that Bill of Exceptions may be approved and settled as the Bill of Exceptions immediately and without further notice.

Dated at Anchorage, Alaska, this 14th day of Mar., 1949.

/s/ J. L. McCARREY, Jr.,
Attorneys for Plaintiff.

/s/ WENDELL P. KAY,
Attorney for Defendant.

[Endorsed]: Filed March 17, 1949. [158]

[Title of District Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS

The defendant in the above-entitled action having applied to the Court for an order approving the foregoing Bill of Exceptions in the above-entitled action, and plaintiff and defendant by and through their respective counsel having stipulated that said Bill of Exceptions is a true, correct and accurate statement of all the testimony introduced in the trial of said cause and all the motions made and the Court rulings thereon, and having stipulated that said Bill of Exceptions may be approved and settled as the Bill of Exceptions in said cause without further notice; and

It further appearing that said Bill of Exceptions contains a statement of the evidence in said cause, and is complete and correct, and said Bill of Exceptions, motions made therein and the Court's rulings thereon, is complete and correct, and said Bill of Exceptions having been heretofore presented to the Court for settlement within the time allowed by law and the rules of this Court, and the Court being fully advised in the premises, it is therefore

Ordered, that the foregoing Bill of Exceptions be, and the same hereby is approved and settled as the Bill of Exceptions in the above-entitled cause upon appeal of the defendant to the United States Court of Appeals for the Ninth Circuit; and it is

Further Ordered, that this order shall be deemed and taken as a certificate of the undersigned Judge of this Court who presided at the hearing of said cause and before whom in said cause the testimony

was given, motions made and the [159] Court's rulings thereon, and that the said Bill of Exceptions contains a full statement of all the evidence in said cause and upon which judgment therein is based.

Dated this 17th day of March, 1949.

/s/ ANTHONY J. DIMOND,
District Judge.

Entered Journal No. G-18, Page No. 269, Mar. 17,
1949.

[Endorsed]: Filed March 17, 1949. [160]

CERTIFICATE OF CLERK

United States of America,
Territory of Alaska,
Third Division—ss.

I, M. E. S. Brunelle, Clerk of the District Court for the Territory of Alaska, Third Division, do hereby certify that the foregoing and hereto annexed pages, numbered from 1 to 161, inclusive, are a full, true and correct transcript of the records and files of the proceedings in the above-entitled cause as the same appears on the records and files in my office; and that this transcript is made in accordance with the stipulations for praecipe filed in my office on the 17th day of March, 1949; that the foregoing transcript has been prepared, examined and certified to by me, and that the costs thereof, amounting to \$17.20, has been paid to me by Wendell P. Kay, counsel for the appellant herein.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court this 19th day of April, 1949.

/s/ M. E. S. BRUNELLE,
Clerk of the District Court, Territory of Alaska,
Third Division. [161]

[Endorsed]: No. 12231. United States Court of Appeals for the Ninth Circuit. Alaska Airlines, an Alaskan corporation, Appellant, vs. Arthur J. Oszman, Appellee. Transcript of Record. Appeal from the District Court for the Territory of Alaska, Third Division.

Filed April 23, 1949.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 12231

ALASKA AIRLINES, INC., an Alaskan
Corporation,

Appellant,
vs.

ARTHUR J. OSZMAN,
Appellee.

**ADOPTION OF ASSIGNMENTS OF ERROR
AS POINTS ON APPEAL**

To the Clerk of the United States Court of Appeals for the Ninth Circuit:

Please be informed that the appellant in the above-entitled action hereby adopts as points on which he intends to rely, the Assignments of Error appearing in the Transcript of Record.

Appellant designates for printing the entire Transcript of Record.

/s/ WENDELL P. KAY,
Attorney for Appellant.

(Acknowledgment of Service.)

[Endorsed]: Filed May 19, 1949. Paul P. O'Brien,
Clerk.

